118

Mr Justice Catron

Maps. 6 3/3

SUPREME COURT OF THE UNITED STATES.

No. ~~294.~~ ~~183~~. 118.

THE UNITED STATES, APPELLANTS,

vs.

MANUEL AUGUISOLA.

[illegible]PEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

GOVERNMENT PRINTING OFFICE.

379

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1 *Office of the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California.*

Be it remembered that on this 19th day of January, anno Domini one thousand eight hundred and fifty-three, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Manuel Auguisola for the place named Temascal, was presented and ordered to be filed and docketed with No. 521, and is as follows, to wit:

(Vide page 3 of this transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

San Francisco, *January* 29, 1853.

In case No. 521, Manuel Auguisola, for the place named Temescal, the deposition of Jose Maria Covarrubius, a witness in behalf of the claimant, taken before Commissioner Hiland Hall, with documents marked H H, Nos. 1, 2, 3, annexed thereto, was filed.

(Vide page 4 of this transcript.)

San Francisco, *October* 5, 1853.

Case No. 521 was submitted on briefs on both sides, and taken under advisement by the board.

San Francisco, *April* 4, 1854.

In the same case Commissioner Alpheus Felch delivered the opinion of the board, rejecting the claim.

(Vide page 41 of this transcript.

2 San Francisco, *August* 15, 1854.

In the same case, on motion of the United States law agent, the following order was made, to wit:

(Vide page 44 of this transcript.)

PETITION.

3 *To the Board of Commissioners for ascertaining and settling Private Land Claims in the State of California:*

Your petitioner, Manuel Auguisola, a resident of Santa Buenaventura, in the State of Santa Barbara, respectfully represents to your honorable board, that he claims a certain tract of land called the Temascal, containing three sitios of grazing land, more or less, situated in the county of Santa Barbara, in the State of California; that he claims the same in fee in virtue of a grant made to Francisco Lopez and Jose Arelanes, under authority of the Mexican government, by Manuel Micheltoreno, governor, commanding general and inspector of both Californias, dated the 17th of March, 1843.

Your petitioner further represents, that the said grantees, on the 27th of September, 1847, transferred their rights to your petitioner.

Your petitioner would further represent, that judicial possession of said tract of land was given to your petitioner on the 30th of November, 1847, and the boundaries thereof designated and defined, and that the original grantees and your petitioners have been in the peaceable possession thereof ever since; that a house has been built on said tract of land, and that he has no knowledge of any interfering claim.

Your petitioner presents herewith the original grant of said land in the Spanish language, marked A; a sketch of the said land, marked C; the prayer for the grant, marked D; the judicial possession, marked F; and the deed of sale, marked H, together with the translation of the said documents, and will make further proof of title if required by the board.

Your petitioner prays your honorable board to take into consideration his claim to said tract of land, and decree his title to be valid and confirm the same.

And your petitioner will forever pray.

H. HUBERT,
Attorney for petitioner.

Filed in office January 19, 1853.

GEO. FISHER, *Secretary.*

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4 **[521.—M. Auguisola.—Jan'y 24]**

Dept. of J. M. Covarrubias.

SAN FRANCISCO, *Jan'y* 29, 1853.

On this day, before Com. Hiland Hall, came Jose Maria Covarrubias, a witness in behalf of the claimant, Manuel Auguisola, (petition No. 521,) and was duly sworn, his evidence being interpreted by the secretary.

The U. S. associate law agent was present.

In answer to inquiries by counsel for the claimant the witness testified as follows:

My name is Jose Maria Covarrubias; my age is forty-four years; and I reside in Santa Barbara.

A paper is now shown me purporting to be a grant to Francisco Lopez and Jose Arellanes, dated 17th March, 1843. I am acquainted with the handwriting and signature of Manuel Micheltoreno and Francisco Arce, and believe their signatures on said paper to be genuine. Said paper is hereunto annexed, and marked H H, No. 1.

A testimonial of judicial possession is also shown me, dated November, 1847, and is hereto attached, and marked H H, No. 2.

I am acquainted with the handwriting and signatures of Vicente

Moraga, Pablo de la Guerra, Raymondo Olibas, Juan P. Azala, and Antonio Rodriguez, and believe their signatures on said document to be genuine.

A paper is also shown purporting to be an instrument of sale from the before named grantees to Manuel Auguisola, dated 27th of September, 1847, and is hereto attached, and marked "H H, No. 3." I am acquainted with the handwriting and signatures of Luis Carrillo, Guell Carrillo, Miguel de la Guerra, Jose Luzo, and Francisco R. Lopez, and believe their signatures to said paper to be genuine.

I know the land described in the said grant. A house was built
on the land by the grantees immediately after the making of
5 the grant, and it has been inhabited ever since. Lopez lived
in the house with his family until the sale to the present
claimant, who has occupied it ever since. The land has, ever since its first occupation, been cultivated, and used for the keeping of cattle.

JOSE MA. COVARRUBIAS.

Sworn and subscribed before me.

HILAND HALL, *Com'r.*

Filed in office Jan'y 29, 1853.

GEO. FISHER, *Secretary.*

7 **[Here follows map, original p. 6.]**

Año de 1847.

Espediente pumovido por las vecinos á Sta. Barbara ciudno. Francisco Lopez y Jose Arrellanes del parage de Temescal, No. 520.

Espediente.

Ang's, *Enero* 17 *de* 1843.

De conformidad con las leyes y reglamentos de la contenia, informe el juez paz del Partido de Sta. Barbara, si el terreno que solicitan las interesados pertenece á lo mencionalo. corporacion ó particular, si estu comprendido en las 10 leguas litorales ó 20 simitrofes, si los interesados tienen bienes por cubrir los, y los requisitos necesarios pa ser otendido conita algunas que paresca necesario á ilustrar la materia henaderdo asi vuelva el espediente á este Prefecteur por los de mas fines convenientes.

ARGUELLO.

Sor. Prefecto del 2° Distrito: Juan Lopez y José Arrellanes vecinos del partido de Sta. Barbara haute V. S. respetuosamente y conforme hayo lugar en derecho hacen prescente: Que la virtud de tener á la fha. un corto numero de ganado y bestias, cubbalenes, que estan padeciendo las mayor estravias con respeto á r'y no he que poder las reducir y en atencion á estas nos hemos en la estrema vecindad de emplorar de la

bondad de V. S. á fin de que le nos concede el terreno que manifiesta el adjunto deseño conocido con el nombre de Temescal el cual es un lugar valdio que se haya á las inmediaciones del rancho de San Franco. y lo estando poseando D. Ygn. del Valle y por otra parte (del rancho de Don Carlos Antonio Carrillo) que dando al terreno pretendido en el senter de ambos ranchos mas por las otras del partes inmediater que contiguar al dicho parage, una es la cuesta de Sierra del Valle, y la otra las lomerias que dan el frente para el rancho de San Francisco, las cuales le hayan de su distancia poco mas de hocho leguas. Portanto A. V. S. Rendidamte. suplicamos el que

[Here follows map, marked original p. 8.]

9 admita este solicita y que corran las debeila informaciones acuerdo de que el lugar que pretendemos no estanto de la necesidad que llebamos dho. como tambien para poner mas cortas siembras para la mantenecion. Despensando el que valla esta en papel comun por no haber en este lugar del recho que corresponde sabor en que eteramte. le vevucinos le conocidos habiendo de su notaria bondad merced y gracia, firmando lo necesario, y no ses de malicia D. D.

STA. BARBARA, *Enero* 12 *de* 1842.

FRANCISCO LOPEZ,

Aruego del intereasado Jose Arguello, por no saber formar.

FRANCISCO LOPEZ.

SOR. PREFECTO: Los interasado en esta instancia obtienen los requisites legales para ser atendidos, temen, bienes somovientes que formentan y son acreedores por sus mentos personales a ser atendidos. El terreno que pretender esta baldio, se hallan fuera de las leguas litorales y dentro de los limitrofes de que trata la ley de la materia lula comprencion de dho sitio; hay muy costo manso de ganado, bronco perteneciente a la mision de Sa. Fernando. Lo que tengo el honor de de decir a V. S. por via de informe, desequesando sa sup'r pervenido de y de Enero ultimo.

Sta. Barbara, 20 de Febrero de 1843.

JOAQ'L CARRILLO.

EXMO. SEÑOR: Mandados practicar el informe correspondiente acorde de la solicitud de los vecinos al partedo de Santa Barbara cuid'ur Francisco Lopez y José Arrellanes, del parage conocido con el runbre de Temascal resulta p. el informe de juez, de Jho partededo, es tar baldio y obtever las pretendientes las requisitos necesarios para ser atendidos, en tal concepto solo resta á ala prefectura poner en el superior conocimiento de V. S. que el primero que representa tiene conecdido por el Gobierno de este Departamento la union de sa hermano Pedro Lopez el terreno contiguo el parage llamado Tajunga en y de gbre. de 1840 con puesto de un sitio y medio de ganado

10 mayor. Espero sui embargo de la espuesto V. E. con mas cinto resolvera lo que fuese de sa superior aguado.

Angeles, Febrero 27 de 1843.

S. ARGUELLO.

Angeles, *Marzo* 1° *de* 1843.

Informe el administrados de San Fernado.

MICHELT'A.

San Fernando, *Marzo* 2 *de* 1843.

Hecha cargo del Espe'dte de los señores Francisco Lopez y Jose Arrellanes del parage llamado el Temascal que solicitan, digo; a V. E. que notengo conocimiento de dho parage que pretenden por estor muy retirado de este establicim'te y creoque habra mas que una que otra rerbronea de esta mision, y para serno hay en aubrieute para que se les conceda dho parage que solocitan Si V. E. hagane por convenente.

Con respeto al parage de Tajunga que hace mencion el Sor. Prefecto quels del primer representante de esta solicitud *que* es Ja. Lopez de quele sedio su parte á su hermano Pedro Lopez por la es caso de agua tanto pr las labores de siembra y aun para las bienes de Jenis lis entes es un poco es caso, es cuanto pueda esponer a V. E. la razon de la juiticia.

JOSE MA. VILLARAS.

Los Angeles, 17 *de* 1843.

Espediente el titulo previas las formalidades del detto.

MICHELTORENA.

11 Angeles, *Marzo de* 17, *de* 1843.

Vista la peticion con que da principio este Espediénte los informes del Sor. Prefecto de este Jusgado Distrito el de Juez de Paz, de San. Barbara y el de administrador de San Fernando contodo lo demas que se huba presente y ver convino de conformidad con las leyes y reglamentos de la materia declará dictro lu propiedad del terreno llanado el Temascal el Cuidadano Fran'co Lopez y José Arreyanes, Colindando por la parte del y con el rancho de Dn. Carlos A. Carrillo y por el sur con el de Dn. Yygnacio del Valle, Librese el correspond'te dispacho y dirizare esto Esped'te a la Exmo. Junta departamental para ser aprobacion.

El Sor. Don Manuel Micheltoreno Gobernador Comand'te General e Inspector de Ambas Californias aso tomando, decreto y finis de que doy fe.

MICHELT'A.

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, John C. Hays, surveyor general of the United States for the State of California, and as such now having in my office and in my charge and custody a portion of the archives of the former Mexican

and Spanish territory, or department of Upper California, by virtue of the power in me vested by law, do hereby certify that the 8 preceding and hereunto annexed pages of tracing paper, numbered from one to eight inclusive, exhibit a true and accurate copy of a certain document now on file and forming a part of the said archives in this office.

In testimony whereof I have hereunto signed my name officially, and caused my seal of office to be affixed, at the city of San Francisco, this thirteenth day of October of the year 1853.

{ Official seal. }

JOHN C. HAYS,
Surveyor General of the U. S. for California.

12 Filed in office Feb'y 13, 1854.

GEO. FISHER, *Sec'y.*

13 1843—Report of proceedings (Espediénte) instituted by the citizens Francisco Lopez and José Arrellanes, residents of Santa Barbara, for the land called Temascal, No. 520.

14 [Place for a seal on the original.]

LOS ANGELES, *Jan'y* 17, '43.

In conformity with the laws and regulations of the matter, the justice of the peace of the jurisdiction of San Barbara, will report if the land herein prayed for belongs to a community or corporation, or to any particular individual; if it is within the ten littoral leagues, or the 30 border leagues; if the parties possess property to put thereon, and the other qualifications, in order to be heard, and all that may be necessary to throw light on the subject; and thus perfected, he will return the report of proceedings (espediénte) to this prefecture for the other necessary ends.

ARGUELLO.

TO THE PREFECT OF THE 3D DISTRICT:

We, Francisco Lopez and Jose Arrellanes, residents of the district of Sta. Barbara, respectfully and agreeably to law represent:

That having at this date a small number of cattle which are now suffering extremely on account of not having a place to put them on, in consequence thereof we find ourselves in the extreme necessity to implore from your kindness that you may grant us the land shown by the annexed sketch, known by the name of Temascal, which is vacant land laying in the neighborhood of the rancho of San Francisco, occupied by Don Ygnacio del Valle on one side, and the rancho of Don Carlos Carrillo on the other; the land herein claimed laying in the centre of both ranchos. The two sides of the said land are bounded on one by the range of mountains called the Valle, and on the other side by the hills facing the rancho of San Francisco, which are eight leagues off. We humbly pray that our prayer be admitted, that the necessary informations be had, inasmuch as the place we pray for is of as great necessity to us as we have stated, and besides to make thereon certain crops for our sustenance.

Excusing us for handing this on this ordinary paper, there not being any of the proper stamp, a favor for which we shall forever be grateful, receiving from your well known kindness, mercy and bountifulness, making oath to all that may be necessary, and that no malice is intended.

STA. BARBARA, *Jan'y* 12, 1842.

FRANCO. LOPEZ.

15 Signed by me at the request of José Arrellanes who does not know how to sign.

FCO. LOPEZ.

To the Prefect.

The parties to these proceedings possess all the legal qualifications in order to be heard. They have movable property to protect, and merit, on account of their personal qualities, to be listened to. The land they pray for is vacant; is beyond the ten litoral leagues and within the twenty border leagues mentioned by the law on the subject.

On the said tract there is a very small quantity of wild cattle belonging to the mission of San Fernando, which I have the honor to communicate to you by way of report, in obedience to your superior order of the 17th of Jan'y last.

JOAQUIN CARRILLO.

SANTA BARBARA, *February* 20, 1843.

SIR: Upon your order to prepare the required report in relation to the prayer of the residents of Santa Barbara, the citizens Fco. Lopez and José Arrellanes, for the land known by the name of Temescal, it appears by the report of the judge of said jurisdiction that it is vacant, and that the petitioners possess the necessary qualifications in order to be heard. Therefore, nothing else remains to this prefecture than to place under your eyes the fact that the petitioner just named herein, had granted to him on the 7th of October, 1840, by the government of this department, in conjunction with his brother, Pedro Lopez, the land called Tajunga, composed of one and a half square leagues, (un sitio y medio de ganado mayor.) However, with this information, with more certainty it may decide whatever may be your superior will.

ANGELES, *March* 1, 1843.

[Here comes in the original the sketch on file.]

16 Let the administrator of San Fernando report.

MICHELTORENO.

SAN FERNANDO, *March* 3, 1843.

Having taken charge of the report of proceedings (espediente) of Francisco Lopez and José Arrelanes for the place called Temascal, prayed for by them, I report to you that I do not know *not know* the tract they pray for, it being so distant from this establishment, and I believe that there is no other but a few wild cattle of this mission on said tract, and as to me there is no objection that said tract they pray for be granted to them if you think it meet.

In reference to the tract called Tejunga mentioned by the prefect as belonging to the party first mentioned in the petition, that is Francisco Lopez, I know that he ceded his part of it to his brother, Pedro Lopez, on account of the scarcity of water for cultivation, and, to some extent, even for the cattle. This is all that I can lay before you in favor of justice.

JOSE MA. VILLARASO.

ANGELES, *March* 17, 1843.

In consequence of the petition which gave rise to this report of proceedings (espediente) the report of the prefect of this second district, the one of the justice of the peace of Santa Barbara, and the one of the administrator of San Fernando, with all that is found necessary and proper, in accordance with the laws and regulations on the subject, I declare the citizens Francisco Lopez and José Arrellanes the owners of the land called Temascal, bounded on the north by the rancho of Carlos A. Carrillo, on the south by that of Yznacio del Valle.

Let the proper order be given, and let the espediente be sent to the departmental deputation for its approbation.

DON MANUEL MICHELTORENO.

17 Governor commandant general and inspector of both Californias, thus has ordered, decreed, and signed. In faith whereof.

MICHELTORENO.

Filed in office February 13, 1852.

GEO. FISHER, *Secretary*

Translations of original grant.

Manuel Micheltoreno, governor general, commandant, and inspector of both Californias:

Whereas the citizens Fco. Lopez and José Arrellanes have prayed for their personal benefit and that of their families, for the land known by the name of the Temascal, bounded by the ranchos of Carlos Carrello and Ygnacio del Valle, the formalities and statement required by the laws and regulations having been previously complied with, using of the faculties conferred upon me in the name of the Mexican nation, I have granted the above mentioned land, declaring it their property by virtue of these presents, subject to the approval of the departmental assembly and under the following conditions:

1°. They may enclose it without prejudice to the crossings and servitude. They will enjoy it freely and exclusively, applying it to the use or cultivation which to them may seem best, but within one year, at the most, they shall build thereon a house which shall be occupied.

2. They will solicit of the proper judge the judicial possession in virtue of this ordor, for which purpose the boundaries shall be marked out wherever land marks fruit and forest trees of the same use shall be placed.

3. The land hereby granted is of three leagues of grazing land according to the sketch annexed to the espediente. The judge who will give the possession shall have the land measured agreeably to ordinance, the surplus to remain to the nation for its use.

4. If the petitioners do not comply with the above conditions they will lose all rights to the land which may be granted to others.

Wherefore, I order that this be their title and be held firm and valid, that entry be made in the proper books, and it be handed to the interested parties for their security and other ends.

18 Given in the city of Los Angeles, the 17th day of March, 1843.

MANUEL MICHELTORENO.

FCO. ARCE, *Secretary pro tem.*

Entry of this provisional grant has been made in the proper book.

ARCE.

Filed in office January 19, 1853.

GEO. FISHER, *Secretary.*

A—Grant 1.

19 Manuel Micheltorena, gobernandor, comandante gen'l, é inspector de ambos Californias:

[SEAL.] Por cuanto lez cindalanor Fran'co Lopez y José Arrellanes han pretendido para su benéfició personal y el de sus familiás el paraze conocedo con el nombre del Temascal colindante rancho de Dn. Carlos Carrillo y con el del ciudadano Ygnacio del Valle, practicada preveamente las diligencias y averezuaciones concermentes segun lo dispuesto per leyes y reglamentos, usando de las facultades que me son conferidas ó nombre de la nacion Mexicana, hebenido la concedeoles lu propiedad de el por las presentes letras sugetandore á lo aprobacion de lo Exmo. Junto Departmental y bajo las condiciones siguientes.

1°. Podra sercarlo sui perjudicar las traveseas Caminós y serridumbres, do disfrutará libre y esclusivante destmando lo uso ó cultios que mas le alomode pero dentro de un ano á lo mas fabricará casá y estara habitado.

2°. Solicitaran del Juez respectivo que les de la posecion juridica lu vertud de este despacho por el cual se abonarlaran los luderos la cugos limites pondra sus magoneras algunos arboles frutales ó silver tres de alguno utilidad.

3°. El terreno de que se hace donación es detres sitios deganado-

mayor segun esplicá el diesno que corre azregado al espdte respectivo. El Juez que dieze la posecion lo hara medir conforme a ordenanza, quedandole sobrante á la nacion para los usos convenientes.

4°. Sí contraviniere á estas condiciones puderan su derecho al terreno y sera denunciable por otra.

En consecuencia mando que surviendo les de titulo el presente y temendose por firme y valedero, se tome razon de el en el libro a que corresponde y se entregue á los interesados para su reguardo y demas fines. Dado en la ciudad de Los Angeles á diez y siete de Mazo de mil ochocientos cuarenta y tres.

FRANCO. ARCE, *Sec. Intn.*

MANUEL MICHELTORENO.

Queda tomado razon de esta concesion provicional en el libro respectivo a fos 1. ARCE.

Filed in office Jan'y 19, 1853. GEO. FISHER, *Sec'y.*

20 SOR. PREFECTO DEL 2° DISTRITO: Fco. Lopez y José Arrellanes, vecinos del partido de Sta. Barbara, haute V. S. respectuos'te y conforme haya lugar en derecho hacen presente: Que en virtud detener a la fha. un corte numero de ganado y bestias caballares las que estan padeciendo los mujares estrabrenes con respeto á no tener un lugar, en que poder las reducir y en atencion á estos nos hemos en la estrema necesidad de inplorar á la bondad de V. S. afin de que se nos conceda el terreno que manifiesto el adjunto deceño conocido con el nombre, de Temescal, el cual es un lugar baldio que se haya en los inmediaciones del rancho de San Fdo. y lo esta poseando Dn. Ygo. del Valle, y por otra parte (el rancho de D. Carlos Antonillo Carrillo) que dando el terreno pretendido en el centro de ambos ranchos, mas por las otras dos partes inmediatos que contiguan al dho. parage una en es la cuesta de la Sierra del Valle, y lo otra las lomerias que dan el freute para el rancho de San Francisco los cuales se hayan de su distancia poco mas de hocho leguas. Portanto A. V. S. Rendidamte. suplicamos al que admita esta mi solicitud y que corran las alibidas informaciones asiendiendo de que el lugar que pretendenios nos es tanto de la vecindad que llebamos dho. como tambien para hacer mas cortas siembras para la mantencion. Dispensando el que valla esta en papel comun por no haber en este lugar del sello que corresponde fabor que enterante. le benucinos le conocidos recibiendo de su notona bondad merced y gracia furando lo necesario, y no ser de malicia.

SANTA BARBARA, *Enero* 12 *de* 1842.

FCO. LOPEZ,

Arruego del interesando Jose Arrellanes, por no saber firmar.

FRANCO. LOPEZ.

Ang's, *Enero* 17, 1843.

De conformidad con las leyes y reglamentos de la materia informe el Juez del partido de Sta. Barbara, si el terreno que solicitan los interesados pertenece á comunidad, corporacion, ó particular, si esta comprendido en las 10 leguas litorales ó 20 limitrofes, si los interesados tienen biemes para cubrir lo y requisitos necesarios para su atendidos, con todo lo demas que paresca necesario á illustrar la materia y habiendo asi vuelva el esped'te á esta Prefectura para los de mas fines que seau conbenientes.

ARGUELLO, *Señor Prefecto.*

21 Lor interesado en esta intsancia obtienen los requisitos legales para ser atendidos tienen brenes removientes que foursentun y son acredores por sus meritos personales á ser atendidus. El terreno que pretender esta Valdio, se haya fuera de las leguas, litorales y dentro de los limitrofes de que trata de la ley de la materia, lu la comprencion de dho—sitio, hay muy coste numero de Ganado bronco, perteneciete a la mision de S. Fernando, lo que tengo el honor de decir a V. S'a por via de informe obrequiando sa superior proscido de 17 de En'o ultimo. Santa Barbara, 20 de Fero de 1843. Joaquin Carrillo. Exmo. senor: Mandado practicar el informe corresp'dn acerca de la solicitud de los vecinos del partido de Sta. Barbara cuidadonas F'co Lopez y Jose Arrellanes del parage conocido con el nombre de Temescal resulta por el informe del Juez de dho partido estan Valdio, y obtener los pretendientes los requisitos necesarios para ser atendidos la tal concepto se lo resta a esta Prefectura poner en el superior conocimiento del E, que el primera que representa tiene concedido por el Gobierno de este Depart'o la union de un hermano Pedro Lopez, d terreno contigu odel parage llamado Tujunga la y de glre de 1840 compuesto de un sitio y medio de ganado mayor peco sui embargo de la espuesto V. E. conmas ascento resalvera lo que fuere de su superior agrado. Ang's, Febrero 27 de 1843. S. Argaullo. Angeles, Marzo 1° de 1843. Ynforme el administrador de San Fernando.

MICHELTORENO.

San Fernando, *Marzo* 2° de 1843.

Hecha cargo del espediente de los señores Fran'co Lopez y José Arrellanes del parage llamado el Temascal solicitan, Digo a V. E. que no tengo conocim'to de dho. parage, que pretenden par estan muy reterado de este Establecimiento y creo que habra maum mero que otro ves bronea de esta mision y para un nohay inconveniente para que se les conceda Dho parage que solicitan de V. S. hayan por conveniente. Con respecto el parage de Tajunga que hace mencion el Señor Prefecto que es del primer representante la esta solicitud que es Fran'co Lopez, si que le sedio su parte á su hermano Pedro Lopez por las escares de agua, tanto para las labores de siembra y aun para las bienes semovientes es un poco es caso si cuanto
22 pendo es poner V. E. ea razon de la justicia.

JOSÈ MA. VILLAC.

Francisco Arce oficial primero y secretario del Despaco del Gob'no del Departament.

Certifico que la presente lapin incluso con el diceno respectivo, es igual al espediente quedara en la Secretaren de mi cargo. Angeles, Marzo 17, de 1843. FRANCISCO ARCE.

Filed in office Jan'y 19, 1853. GEO. FISHER, *Sec'y.*

23 E.

[Translation of prayer for grant.]

To the Prefect of the second District:

Fr. Lopez and José Arrelanes, residents of Santa Barbara, agreeably to law, respectfully present themselves before you, and represent: That possessing at this date a small number of cattle and horses, which are suffering on account of their not having a place within which to confine them, they therefore find themselves in the necessity to pray for the grant of the land described in the annexed sketch, and known by the name of Temascal, which is vacant, and is in the neighborhood of *the neighborhood of* the Branch of San Francisco, owned by Ygnacio del Valle, and the rancho of Don Carlos Antonio Carrillo, the land petitioned for being between the two aforesaid ranchos, but one of the other sides being bounded by the ridge of the valley, and the other by the hills fronting the ranch of San Francisco, distant about eight leagues from one another.

We therefore humbly pray that our prayer may be granted, and that the necessary informations may be made to ascertain whether the land prayed for is as necessary to us as we have represented, as also for the raising of crops for our sustenance; praying to be excused for presenting our demand on this ordinary paper, in default of stamped paper, which could not be found in this place; for which favor, mercy, and grace from your well known kindness we shall eternally be grateful, making the necessary oath, and declaring that there is no fraud. FCO. LOPEZ,

In the name of Jose Arrellanes, not knowing how to sign.

FCO. LOPEZ.

Agreeably to the law and regulations, the justice of the peace of Sta. Barbara shall inquire whether the land prayed for belongs to any community, corporation, or individual; if it is within the 10 litoral or boundary leagues; whether the parties have cattle to put on it, and the necessary qualifications, and all the necessary particulars to explain the matter, and thereupon return the espediente to this prefecture for such other purpose as may be necessary.

ARGUELLO, *Prefect.*

24 The parties possess all the legal requirements for the purpose. They possess cattle and are meritorious for their personal qualities, and their prayer should be granted. The land they pray for is vacant; it is beyond the ten litoral and twenty boundary

lines alluded to in the law. There is thereon only a few cattle belonging to the mission of San Fernando, which I hereby submit according to your decree of the 17th of January last.

JOAQUIN CARRILLO.

STA. BARBARA, *February* 20, 1843.

SIR: You are required to take the necessary information relative to the prayer of the citizens Fco. Lopez and José Arrellanes, residents of Sta. Barbara, as to the land known by the name of Temascal. It appears by the report of the judge that said land is vacant and that the petitioner possess the necessary qualifications to obtain the grant. It therefore only remains for this prefecture to request of you to ascertain whether a piece of land near the one prayed for, and called Tajunga, has not already been granted by the government on the 7th of November, 1840, to Fco. Lopez, and his brother Pedro Lopez, said land being of one and a half square leagues of grazing land. However, without regard to what has been expressed above with more facilities, you will decide whatever you may think most proper.

J. ARGUELLO.

LOS ANGELOS, *February* 27, 1843.

LOS ANGELOS, *March* 1, 1843.

The administrator of San Fernando shall make the inquiries.

MICHELTORENO.

SAN FERNANDO, *March* 2, 1843.

I have taken into consideration the espediente of Fco. Lopez and
Jose Arrellanes, praying for the land called the Temascal,
25 and I answer to your excellency that I do not know the land
prayed for, it being very distant from this establishment. I
believe there is on it but a few wild cattle belonging to this mission, and should you think it proper to grant them the land you might do it, as to me, I think there is no objection.

As to the land of Tajunga, spoken of by the prefect, I know that Fco. Lopez, on account of the scarcity of water as well for the cattle as for the crops, gave it to his brother, Pedro Lopez.

This being all I can state to your excellency for the sake of justice,

JOSE VILLABRENICIO.

Fco. Arce, first officer and secretary pro tem. of the departmental assembly, certify that the present copy, together with the design, is a true copy of the espediente in the office under my charge.

Los Angeles, March 17, 1840. FCO. ARCE.

Filed in office Jan'y 19, 1852.

GEO. FISHER, *Sec'y.*

26 SOR. ALCALDE 1° DE ESTE LUGAR: Manuel Auguisola vecino
de esta jurisdiccion ante V. la debida forma comparesco y
dejo; que habiendo obtenido por via de compra hecha á los Señores

Francisco Lopez y José Areyanes la propiedad del terreno conocido lon el nombre de Temescal segundo demuestra el a alijunta escritura que acompaño asi como el titulo y disceno por los cuales fué concedido por el Gobierno del Departamento a Dhos Señores el mencionado parage suplico á V. se suva dar me la pocesion juridica de estilo con arreglo a los documentos que llubo referidos subrenilore admitere esta en papel comun por no haber sellado. Juro no en de maliera D.
Sta. Barbara, Nov. 10 de 1847.
Arraugo del Intuerado. VICENTE MORAGA.

Sta. Barbara, *Noviembre* 10 *de* 1847.

En virtud de la antecedente solicitud prodedase por mi el presente Juez á la medicion senalmte. de linderas q'posecion judicial del terreno de Temescal que solicita el intreesante en este Espediente con arreglo á las documentos que acompaña; señalandose pr. efectuar la el dia Venite del corriente y para lo que se citaron conboleta de comparendo á los colindantes. Asi yo el alcalde Primero constitucional del partido de Sta. Barbara lo mande decreté y firmé, Acteando por receptona contestigos de asistenecia por falta de Escribano publico. Doy feé.

Pablo de la Guerra, Raymundo Olivas, Vicente Moraga en la misma fecha presente D. Manuel Auguisola se le notifico el auto que antecede y de el entendido digo; que lo oye y da por citado, y lo firmo con migo y los testigos de asistencia con quien actuo de la forma ordinaria. Doy feé. Pablo de la Guerra. Raymundo Olivas. Vicenta Moraga.

En la misma fecha se le braron los voletas que se mandan de el primero prarenido y por que conste por diligencia.

(La Rubrique—Rubrique.)

27 En el rancho de Temescal á los Veinte de Noviembre de mil ochocientos cuarenta y siete, en complimiento de lo esta librada á los culindantes del espresado rancho concuriasan Don Luis de Jesus Carillo como apoderado de su padre Dn. Carlos Carrillo y aquien adbestio que Dñ aproseder á la medicion señal amiento de linderos y posecion juridica á favor de Dn. Manuel Auguisola y algo puedan entendido y firmó na habian comparecido Dn. Ygnacio del Valle apresar de la boletae le lemandi y para constancia lo firmó co los de mi asistencia de que doy feé.

PABLO DE LA GUERRA.

Raymundo Olibas.
Manl. Moraga.

En seguida yo el Juez de estos antes nombré por medidores en la presente posecion á los ciudadanos Antonio Rodriguez y Juan Pablo Ayala quien previa lo aceptaron y Juramto. precedaran al desempeño de su encargo y pa. constancia lo pongo por deliga. que firmó con los de mi asistencia.

PABLO DE LA GUERRA.

Victe. Moraga.
Raymundo Olibas.

En la fha. y en el espresado rancho se testifico el anto que antecede á las ciudadanos, Antonio Rodrigues y Juan Pablo Ayala, y entendidos dijeron que aceptan y aceptaban dicho encargo de medidores y Juraron por dios nuestro Señor y una señal de cruz hacerlo fiel y legalmente á tanto su leal, saber y entender sin dalo ni fraude contra persona alguna y lo firmaron con migo y los de mi asistencia. Doy feé.

PABLO DE LA GUERRA.

Raymundo Olibas.
Juan P. Ayala.
Vitce. Moraga.
Antonio Rodrigues.

Incontinente yo el referido alcalde mandé traen á mi presencia un cordel con que se han de medir las tierras de dicho rancho y que los medidores lo midan de á cincuenta varas lo que firmé con los de mi asistencia de que doy feé.

PABLO DE LA GUERRA.

Vtce. Moraga.
Raymundo Olibas.

28 En seguida y en posecion de mi el espresado alcalde los medidores mencionados, tomaron un cordel compuesto al efecto para medir tierras, y con una vara de medir usual Mejicana Medieron cincuenta varas en dicho cordel para con el hacer la referida medicion y para que conste lo rubrique.

En la misma fha. y en el referido rancho de Temescal sieudo como los nueve de la manaña. Yo el espresado juez pa. proceder la medicion de tierras que se ha de hacer á D. Manuel Auguisola Maudé á los medidores nombrados se pongau en el lindero de Dn. Carlos Carrillo que es desde un ramellete de culinas que esta en el cumbre de nna loma que se haga algo dentro de la Cañada nombrada de Pino y el lado derecho del arroyo del mismo nombre y remate en unos cinco alisos que se encuentren serea del mismo arroyo, alimados con dicho ramellete de encinos de sudeste á noroeste. Puestas pues dichos medidores en el mencionado lindero y tomando el rumbo noroeste seguida la Cañada arriba, hasta dondé el arroyo de Pino (que corre por todo la Cañada) formera recado, el cual lo hace venir haste alli con cuerro es nordeste si Medieron siento cincuenta cordeles y por pudiendo seguiré dechos mediciones desde este punto para ningun rumbo á causa de la quedabra del terreno despuse yo el Juez de estos antos, de figare por lindero el se ronoto mencionado desde este lugar retrosundo por todo el arrago. hasta llegar á un mono ó pequeño promemtareo de tierra se fijo este punto pa. proseguir las mediciones y tirandale el cordel desde dicho mono rumbo oeste suroeste se medieron cincuente cordeles que pudiendose fijar, objeto alguno remarcable por lindero sieudo por otro parte el terreno muy montando dispuse que lo lindero por este rumbo fuese una linea parabla con el dicho arroyo de Pino, desde el linderos de Dn. Carlos Carrillo. Quedando medir legua de distancia al dicho arroyo hasta ponerse frente del ya repitido recado formando con este un

29 rectangulo Balniendo al dicho punto del mono, y tomando el rumbo del es nordeste entrando y seguiendo la cañada de Temascal, hasta encontrar la cuesta pequeña que sirve de lindero al Rancho de San Francisco y en cuya pie por el lado de Pino, haya un pequeño aguage le medieron ciento cinquente cordeles, y llegado que se hubo á de frente se encontro con el mismo trapiezo de na poderie contumar las medidas por la razon dicha de la nis tantier de la tierra; asi es que fué preciso tirar otra paralela de una legua y media de distancia con el arroyo de Pino, rencatandola por el sur Sureste con las lomas, que forman los linderos de canculo, y por el Nor-Noreste hasta encontrar con la perpendicular que ruya de la otra paralela que se tiro al lado opuesto, con lo que se concluyo el acto de medicion, y para constancia lo firmé por anto, con los testigos de asistencia de que doy feé.

Raymundo Olibas. **PABLO DE LA GUERRA.**
Antonio Rodriguez.
Vte Moraga.
Joan P. Ayolo.

En el referido rancho de la cañada de Temascal y en el mismo dia mes y ano Don Manuel Auguisola vecino de este partido de Sta. Barbara acompanañdo del alcalde y testigos de anstencia de estos antos. Digo que habiendome medido las tierras de este rancho segun consta en el anto anterior, tomado y toma la vesdedera y corporal posecion de dichas tierras medidas, pues le pertenecen por las justus documentos que legalmente ha obtenido; entro y paso por ellos, arranco yerbas. Es parcio punarlas de tierra rampio ramas de las arbales é hizo otras demostraciones y actos de posecion en señal de lo que dijo toniba de dichas terras. Y yo el dicho alcalde mandé que desde entonus lo tuvieran y reconocieran por verdadera Señor y poredor de ellos. De todo lo espuesto cir pidio Dicho Don Manuel Auguisola que para memoria en lo venderó y consideraciones de sus derechos se le entregue estas dilegencias orignales quedando
30 en el Jusgado con testimonio pr. la debida constancia, y lo firmo con migo y los testigos de asistencia. Doy feé.

PABLO DE LA GUERRA.

Vcte. Moraga.
Raymundo Olibas.

En la fha. se saco el testimonio correspondiente y se archios en el Juszado primero del partido de Santa Barbara y pa. constancia lo firmo conmigo y los de mi asistencia, segun derecho. Doy feé.

PABLO DE LA GUERRA.

Vcte. Moraga.
Raymundo Olibas.

En la papio fha se entrego estas diligencias al interesado en cinco foha utiles para los fines que se combengan y pa. constancia lo rubrique.

Quedaba pagados los derechos correspondientes.

GUERRA.

Filed in office Jan'y 19, 1853.

GEO. FISHER, ***Sec'y.***

31 *Señor Alcalde, of this place.*

Manuel Auguisola, a resident of this place, appearing agreeably to form, and says, that having obtained by means of purchase from Francisco Lopez and José Arellanes the property known as the Temescal, as described by the document hereto annexed, together with the plat and grant, by virtue of which it was granted by the departmental government to the aforesaid persons, he therefore prays that the usual judicial possession be given to him agreeably to the above mentioned documents, praying that this petition be admitted on this ordinary paper in the absence of stamped paper. He swears no malice, &c., &c.

Santa Barbara, November 10, 1847.
At the solicitation of the party.
(Signed) **VICENTE N. CORAGA.**

C.

Judicial possession.

SANTA BARBARA, *Nov.* 10, 1847.

Agreeably to the above petition, let the measurement establishment of boundaries and judicial possession of the land known as the Temascal, prayed for agreeably to the accompanying documents, be proceeded to by me, the present judge, fixing for that purpose the twentieth day of the present month for which the adjoining land owners were summoned to appear. Thus I, 1st constitutional alcalde of the partedo of Santa Barbara, ordered, decreed, and signed it, acting *ad interem*, with the assisting witness, in the absence of a public notary. I attest:

(Signed) **PABLO DE LA GUERRA.**
(Signed) VICENTE MORAGA.
(Signed) RAYMUNDO ORIBASO.

On the same day the above was notified to Manuel Auguisola, who understood it, and who said that he admitted notice of the same, and signed it with me and the assisting witnesses with whom I acted, according to the ordinary form.

Certificate to— **PABLO DE LA GUERRA.**
(Signed) VICENTE MORAGA.
(Signed) RAYMUNDO ORIBASO.

32 On the same day the notices already referred to, were delivered, and in testimony whereof I made my flourish.

At the rancho of Temescal on the 20th November, 1847, agreeably to the notice delivered to the owners of land adjoining the aforesaid rancho, appeared Don José de Jesus Carrillo as attorney of his father, Don Carlos Carrillo, and who was informed that the measurement, the defining of the limits, and the judicial possession, was going to be proceeded with in favor of Don Manuel Auguisola; he acknowledged notice thereof, and signed. Don Ygnacio del Valle not appearing, although notified.

In testimony whereof I signed the same, with the assisting witnesses.

Certified to— **PABLO DE LA GUERRA.**

Vicente Moraga.
Raymundo Oribas.

In continuation, I, the judge in these proceedings, appointed citizens Antonio Rodriguez and Juan Pablo Ayala, as measurers in the present possession, who, after having accepted, and been sworn, proceeded to the discharge of the duties of their appointment.

In testimony whereof I note it as a decree, which I sign with my assisting witnesses; which I attest:

PABLO DE LA GUERRA.

Raymumdo Oribaso.
Vicente Moraga.

On the above date, and at the aforesaid rancho, I notified the above proceedings to citizens Antonio Rodriguez and Juan Pablo Ayala, who said that they accepted the *appointed* as measurers, and sworn before God our Lord, and by the sign of the holy cross, that they would perform their duties faithfully and legally, according to their best ability and understanding, without fraud or injury to any one; and they signed these presents with the assisting witnesses.

Antonio Rodriguez. **PABLO DE LA GUERRA.**
Juan P. Ayala.

Certified to—

Vicente Moraga.
Raymundo Oribaso.

33 Thereafter I, the aforesaid alcalde, ordered that a line, for the purpose of measuring the land of said rancho be brought to me, and that the measurers measure it fifty varas; which fact I sign with the assisting witnesses.

PABLO DE LA GUERRA.

Witnesses—

Raymundo Oribaso.
Vicente Moraga.

After which, and in the presence of the aforesaid alcalde, the measurers of aforesaid took a line used to measure lands, and with a Mexican vara they measured off fifty varas of said for the purpose of making the aforesaid measurement; and in testimony whereof I have affixed my flourish.

On the same day, and at the aforesaid ranch of Temascal, it being about nine in the morning, I, the aforesaid judge, proceeding to the measurement of land to be made for the benefit of Manuel Auguisola, ordered the said measurers to place themselves on the line of Don Carlos Carrillo, which is from a cluster of oaks on the top of a hill, being a little (algo) inside of the valley called the Piño, on the right side of the stream of the same name, ending where some five sycamores are to be found near the same stream, on the same line with the cluster of oaks from southeast to northwest. The measurers being placed as aforesaid, taking a northeast direction, following up

the valley to where the stream of Piño (which runs along the whole valley) forms an angle, (recodo,) which causes it to arrive at that place in an east northeast direction, they measured *and* one hundred and fifty cords, and, it being impossible to continue the same measurement from this point in any direction on account of the mountainousness of the land, the judge presiding over these proceedings ordered that the above angle (recodo) be considered as a boundary. Thence returning along the stream to a small elevation (morro) this was settled as a point from which to continue the measurement, and, drawing the cord from this elevation (morro) in a west southwest direction, fifty varas were measured, and, not being able to fix upon (no podiendose fijar) any remarkable object as a boundary on account of the mountainousness of the land, I ordered that the
34 boundary in this direction should be a line parallel with the said
stream of Piño from the boundary line of Don Carlos Carrillo, keeping at a distance of half a league from said arroyo until arriving at a point in front of the aforesaid angle, (recodo,) forming with this (recodo) a rectangle. Returning to the aforesaid elevation (morro) and taking an east northeast direction, entering and following the valley of Temescal to the small ridge, (cuesta,) which is the boundary of the Rancho of San Francisco, at the foot of which, and on the side of the Piño, there is a little pond, (aguge,) one hundred and fifty cords were measured, and, encountering at this place the same difficulties of measuring on account of the said mountainousness of the land, it was necessary to draw another line of one league and a half parallel with the stream of the Piño, terminating south southeast at the hills which form the boundaries of Camulo, and on the north northwest until it intersects the perpendicular falling from the other parallel line of the opposite side, thus terminating the measurement. And in testimony whereof I signed these presents with the assisting witnesses.

PABLO DE LA GUERRA.

Certified to—
(Signed) Vicente Moraga.
(Signed) Antonio Rodriguez.
(Signed) Raymundo Oribaso.
(Signed) Juan P. Ayala.

At the aforesaid rancho de la cañada de Temascal, and on the same day, month, and year, Don Manuel Auguisola, accompanied by the alcalde and the witnesses to these proceedings, declared that the lands of this rancho having been measured, as appears by the foregoing proceedings, he took and does take true and actual possession of said measured lands, as they belong to him according to the true documents legally obtained by him, here entered upon and walked around on said lands, threw about handsful of earth, broke limbs of trees, and did other acts of possession in sign of that which he said he took of the said land, and I, the aforesaid alcalde, ordered that henceforth said Auguisola be known as the true owner and possessor of said lands.

For the proof of the foregoing proceedings in the future, and for the preservation of his rights, said Manuel Auguisola prayed that the original proceedings be handed to him, proof thereof 35 remaining in the court in faith thereof; and I signed the same with the witnesses assisting me.

Certified to— PABLO DE LA GUERRA.
Vicente Moraga.
Raymundo Oribaso.

On the above date proof hereof was taken and filed in the first office of Santa Barbara.

In faith whereof I have signed these presents with the assisting witnesses, according to law.

Certified to— PABLO DE LA GUERRA.
Raymundo Oribaso.
Vicente Moraga.

On the above date these proceedings were delivered to the party, being on five leaves, for the uses he thinks fit.

In faith whereof I placed my flourish. "Flourish."

The proper fees were paid. GUERRA.

I hereby certify the foregoing to be a true and accurate translation of a Spanish original in case No. 521, wherein Manuel Auguisola claims Temescal, now on file in this office.

In testimony whereof I have hereunto signed my name, office of the secretary of the U. S. land commission, San Francisco, this 24th day of March, A. D. 1854. GEO. FISHER, *Secretary.*

Filed in office Jan'y 19, 1853. GEO. FISHER, *Sec'y.*

36 *Deed—H.*

En el puerto de Santa Barbara del departamento de los Californias à las venite y sieto dias del mes de Septembre de mil ochocientos cuarenta y siete ante mi Luis Carrillo, alcalde 2d de esta municipalidad (p. en excrisno por ansen'cia del 1no) y por ante los testigos de mi assist'a con quienes actuo por receptoria a falta de Escribano publico, á mas de las instrumentales que a fin de denominaran comparecieron Dn. Franco. Lopez, apoderada por su Padre Dn. Francisco Lopez y Dn. José Arrellanes, a quienes doy se conosco, y dejeron que por se y a nombre de sus herederos y sucesores y de quien de ellos ubierre titulo, voz, causa de cual quiera manera, vendan y dan in venta, real y enagenacion perpetua por pero de heredad, para siempre jamas a D. Manuel Auguisola y á los suyos el rancho que tienen de su propiedad conocido con el nombre del Temascal, colindante con el rancho de D Carlos Carrillo y con el D. Don Ygnaceo del Valle, el cual terreno contiene tres sitios de ganado mayor, segun el titulo de concesion y disceno respectivo, inclusos los documentos de todo lo que asen entregen en debida firma, Don Franco. Lopez á nombre de su poderante y D. José Arrelanes, a D. Manuel Auguisola, en cuyo rancho tienen derecho por haberse los concedido legalmente el superior gobno. departmental en diez y siete de Marzo de mil ochocientos

cuarenta y tres por cuyo titulo se corresponde a su poderante y Don José Arellanes lu posecion y propiedad, el cual declaran y aseguran no tener lo vendido empeñado en allo todo in parte, y que esta libre de titulo memoria Capellaria, vinculo, fianza y de otro gravamen real perpetuo temporal especial, general, lacito y aprero y como tal selo venden, quedando á entregarlo en la forma y p. disposicion que particularmente en cobenido en la cantidad de tres cientos treinta pesos las que an recibido lu la manera siguiente. D. Franco. Lopez sien pesos en plata y seis cienta en efectos, y Don José Arellanes crento setenta en plata y diez en fectos, los que declaran aber recibido los herederos haben recibido a toda su satisfaccion y que por tanto renuncion la escepcion que pudiera oponerse por no contar de presentarse la lei 7°, titulo 1°, parte 5ª, formalisan Don Fra'co Lopez a nombre de su poderante Don José Arrelanes a favor del comprador la mas firme y eficas casta de venta que aun fegaoidad
condusca y asi mismo que el justo precio y verdadero valor del
37 espresado rancho con las tantos pesos que no vale mas ni allaren
quien mas les dierra por el y si mas vale o valer puedi del eyeseso
en poca ó mucha suma hasen a favor del Comprador y de sus herederos y sucesores, gracia y donacion para mesa, perfecta he irrevocable en sanidad con insumacion y ademas formalos legales, y remucia la ley 2, titulo 1°, libro 10, para recopilacion y hasta de los contratos de venta, staques y de otro la que hay licion en mas ó menos de la mitad de su justo precio y las cuatro años que prefiera para sa posecion recision ó suplamento á su justa valor, los que dan por pagados como si efectu'te se establicieron y desde hoy en adelante para siempre se des poderan desisten, quetan y apartan á sus herederos y sucessores, del dominio propiedad posecion que le competa el eunuciado rancho, ceden renuncian y traspasan con los acciones reales y personales, atiles, mxtas, directas y efectivas lu el comprador y en cual la suya represente para que la poseé, Cambié enageué, use y disponga de el a su decision, como de losa suya adqurida como legitimo á justo titulo, le confieran poder irrevocable con libre franca y general ad'mor y le constituyen procurado, actor en sa propir causa para que de sa autoridad, ó judicialmente entre y se apodere la real tenencia y posecion, que por derecho lecompete y para que no presento tomar la peden se le de copia. autorisada por la presente escritura, con lo cual sus otro acto de aprencion hasta ser visto, haberla tomado aprendida y trasferidorele y la el interim se constituyen, sus enquitunos trendores, y precarios posedores en legal forma y se obligan a ql. dho rancho sera cierto seguro y efectivo al comprador y nadié le inquetara ni movera pleito sobre sa propedad, posecion, goze, dufruta ne compra ello apavecera y gravamen alguno y, si sele inquntare, moviere, o apareciere, luego que los otorganles ó sus herederos y sucesores sean requiridos conforme á dercebo saldran á mi defensa y le seguran a sus espensas en todos instancias y tribunales hasta efectisonales y dejar al comprador á los sullos en libre uso quieta y no pudiendo conseguirlo le daran otro igual en valor del sitio, venta y
comodidad y en su defecto le restituaran la cantidad que han
38 desembalsado las mejoras utiles, precisas y voluntarias y, á la
rason tengan el mallar valor y estencion que con el tiempo

adquiera de todas los costes, gastos entereses y memoriales que se quieren, he irregoraren por todo lo cual se la hade poder efectuar en virtud de esta escritura y peramento del que lai de quienes le representan la quiere defiere se importe y le Valeba en otra prueba saber observancia de todo lo referido obligan sus personas, bienes divdos y por haber, renucian las leyes de su foror y defensa, con la gral del derecho en favor, y confieren amplio poder a las tres Jueces que de este negocio deben conocen. Conforme a Dto. para que les queren á su complimiento como setentia defuntiva de Juez competente para en autoridad de casajusgada y consenteda que por tal le reciben y lo firmaron con migo y las de mi asistencia siendo las instrumentales los ciudadanos Carmillo Antonio Rodriguez, y Pascal Boteller, presentes de este puerto.

LUIS CARILLO.

Guillermo Carillo, Jose Luzo, Arruego, Jose Arruego de José Arrellanes por no sabro escriber.

MIGUEL DE LA GUERRA.

FRANCISCO R. LOPEZ.

Filed in office Jan'y 19, 1853.

GEO. FISHER, *Sec'y.*

[Translation of deed of sale.]

39 *Document "I."*

In the port of Santa Barbara, of the department of California, on the 27th day of the month of September, 1847, before me, Luis Carillo, 2d alcalde of this municipality, acting in the absence of the 1st, before the assisting witnesses with whom I acted in the absence of a public notary, and with the other witnesses which for the purpose were appointed, appeared before me Don Fco. Lopez, in the name of his father, Don Fco. Lopez and Don José Arrellanes, whom I authorized, and whom I know, who said, that for themselves, their heirs, and assigns, and for whomsoever holds a title under them, they sell to Don Manuel Auguisola the rancho which they own, and which is known by the name of Temescal, bounded by the rancho of Don Carlos Carrillo, and the one of Don Ygnacio del Valle, which land contains three sitios of grazing land, according to the original grant and sketch, and the documents handed to said purchaser in due form by Don Fco. Lopez in the name of his father and Don José Arrellanes, which rancho they own by a grant legally made to them by superior departmental government on the 17th day of March, 1843, and by virtue whereof the said Lopez, Arrellanes, which property they declare not to have sold, alienated, nor given in pledge, in whole nor in part; that it is free of taxes or encumbrances whatsoever, and as such they sell the aforesaid rancho, to be hereafter delivered according to particular forms, for the sum of three hundred and thirty dollars, which have been received in the following manner by Lopez: one hundred dollars in cash and fifty dollars in merchandise, and Arrellanes seventy dollars cash and ten dollars in merchandise, which the venders declare to have received to their entire satisfaction; and they not having been paid in the presence of the officer, they therefore renounce the exceptions which might be set up under the law 7, title 10; Fco. Lopez, in the name of his father and José Arrellanes, hereby execute the most firm and valid deed of sale which his security may require, and the venders declare the above mentioned price is the real value of said rancho; that it is not worth more; and if it was worth more, the difference of the price, either low or elevated, shall be in favor of the purchaser, his heirs or assigns, as a pure, irrevocable, and simple donation, made in good faith, with exhibition and other binding formalities, the venders renouncing the law 7, title 10, book 10 of the recopilacion which 40 treats of the contracts of sale, exchange, and other contracts in which there may be lesion for more or less than the just price, and also the four years within which the recision of the contract may be asked on the payment of an additional amount to reach its just price; which four years is agreed to have elapsed as if really it was so in fact; and from this day henceforth they abandon all the rights, title, and interest which they or their heirs may have in the ownership and possession of the aforesaid rancho; ceding, renouncing, and transferring it with all its real, personal, useful, mixed, direct, and effectual actions in favor of the purchaser, in order that he may possess, exchange, use, alienate, and dispose of it as he may desire, and as of a property of his own, legitimately acquired, and under a just title, they confer unto him irrevocable, with the free and general administration, and they constitute him attorney and plaintiff in his own cause in order that of his own authority, or judicially, he may take the real possession of the said rancho which thereto by right to them appertains; and in order to avoid all difficulties the present is handed unto him with which without any other further act they will be actually in possession, and in the meanwhile he is constituted their tenant and possessor of said rancho by a precarious title, in legal form; and they bind themselves that the said rancho shall surely, securely, and effectually be the property of said purchaser; that no one shall disturb him in his possession nor encumber the same; and if he is disturbed as soon as the venders, or their heirs, or successors, shall be acquaint'd, they shall appear in his defence, according to law, and defend him at their expense on all actions and tribunals, until judgment, and until the purchaser, or those standing in his stead, shall be in the free enjoyment, and in the quiet and pacific possession of said rancho; and in case this result could not be obtained, other land, equal in value and in size, shall be given him; and default thereof, the purchase money shall be returned to him, together with the actual and increased value of the precise, useful, and voluntary improvements, according to valuation, with the costs, interest, deteriorations, incurred, for which he, or his assigns, may owe them, in virtue of this document and oath, and obtain the value of the damages suffered, without further proof. And for the executions thereof, they bind themselves, their actual property, and those

they may hereafter require. They renounce all and singular the laws in their favor, or for their defence; and they confer to
41 the judges having jurisdiction, full power to compel them to
execute the conditions of this deed; and by a final judgment having the force of res judicata, or a judgment by confession, and as such they declare it, and sign it with me, and the assisting witnesses; the others being the citizens, Juan Camarrillo, Antonio Rodriguez, and Paseual Botelleo, witnesses present, and residents of this place.

LUIS CARRILLO.
GUILLEMO CARRILLO.

At the request of José Arrellanes, he not knowing how to sign.

FCO. LOPEZ.

MAGUEL DE LA GUERRA,
JOSE LAZO.

Filed in office Jan'y 19, 1853.

GEO. FISHER, *Sec'y.*

42 *Opinion.*

MANUEL AUGUISOLA,
vs.
THE UNITED STATES.

521. For the place called Temascal, in Santa Barbara county, containing three square leagues of land.

It is alleged in the petition to the commission that the land claimed was granted by Governor Micheltoreno to Francisco Lopez and José Arellanes on the 17th day of March, 1843, and that said grantees conveyed the same to the present claimant on the 27th day of September, 1847. The grant and conveyance are given in evidence in the case.

The deposition of José Maria Covarrubius shows a full compliance as to inhabitants and cultivation of the land by the grantees previous to the conveyance to Auguisola.

The land granted is specified in the conditions of the grant to be three square leagues in extent, and judicial measurement was required to be obtained by the grantee in order to define and segregate the land granted. The tract of land, within the limits of which the three square leagues were to be surveyed, is described in the petition as lying in the neighborhood of the rancho of San Francisco occupied by Don Ygnacio del Valle on one side, and the rancho of Don Carlos Carrillo on the other, the land herein claimed lying in the centre of both ranchos; the two other sides of the said land are bounded on one by the range of mountains called the Valle, and on the other side by the hills facing the rancho of San Francisco, which are eight leagues off. In the decree of concession the land is described as bounded on the north by the rancho of Carlos A. Carrillo, on the south by that of Ygnacio del Valle, which is called San Francisco, without specifying either of the other sides. It is difficult to know from this vague description the exterior limits of the large tract of land here described. The distance of the hills specified as one of the boundaries from the

rancho of San Francisco, the opposite side would indicate its extent in one direction to be eight leagues. Within these limits the land granted, three square leagues, was to be located by judicial measurement.

A testimonial of the act of judicial possession and measurement is
given in evidence, but the description of the proceedings and
43 of the land intended to be segregated in satisfaction of the
grant are so imperfect, and indeed contradictory, that they
cannot be relied upon to aid in the matter. If anything can be inferred from them in regard to the location of the land surveyed, it would seem to be that the survey embraced a tract of land extending the whole length of the premises above described, north and south, and being two leagues in width from east to west. This would give the claimant many times over the quantity of land granted to him.

There is a map attached to the original documents, but it gives no information of value on the subject. It has no scale of distances, and designates none of the boundaries of the land. At the bottom of this map, however, is placed an explanation, giving the extent of the land from north to south as three leagues, from east to west one and a half league, intended, evidently, to describe the extent of the land granted, containing three leagues. A palpable alteration has been made in the figures in this note, changing them so as to make the land three leagues from north to south and two and a half leagues from east to west, making the contents of the premises seven and a half square leagues instead of three, the quantity granted.

A survey of this character, in order to segregate the land granted, must be made within the limits and according to the terms specified in the grant. It is a survey of a specified quantity, and the land segregated by the judicial officer making the measurement should be defined by such certain and accurate description as to enable the surveyor to retrace the limits by the calls specified in the memorial of the judicial possession.

After a careful examination of the papers presented in the case we are of opinion that the description contained in the return of judicial measurement is too vague, uncertain, and contradictory to segregate any portion of the land; that portion must be, under any rational construction of the description, a much larger piece of land than is conceded by the grant, and totally inconsistent with it. It must therefore be regarded as constituting no evidence of the segre-
gation of the land claimed.

44 This view of the character of the act of judicial possession,
and the utter insufficiency of it as a basis of the rights of the
claimant, renders it unnecessary to discuss the question as to the authority of making such a judicial measurement at the time this bears date, to wit, on the 20th November, 1847.

The claim must be rejected.

Rejected.

Filed in office April 4, 1854.

GEO. FISHER, *Sec'y.*

Decree.

MANUEL AUGUISOLA
vs.
THE UNITED STATES.

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the said claim of the petitioner is not valid, and his application for a confirmation thereof is therefore denied.

ALPHEUS FELCH,
THOMPSON CAMPBELL,
R. AUG. THOMPSON,
Commissioners.

Filed in office April 4, 1854.

GEO. FISHER, *Sec'y.*

45 And it appearing to the satisfaction of this board that the land hereby adjudicated is situated in the southern district of California, it is hereby—

Ordered, that two transcripts of the proceedings, and of the decisions in this case, and of the papers and evidence upon which the same are founded, be made out and duly certified by the secretary, one of which transcripts shall be filed with the clerk of the United States district for the southern judicial district of California, and the other be transmitted to the Attorney General of the United States.

46 OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing forty-four pages, numbered from 1 to 44, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings, and of the decision of the said board, and of the documentary evidence, and of the testimony of the witnesses, upon which the same is founded, on file in this office, in case No. 521 on the docket of the said board, wherein Manuel Auguisola is the claimant against the United States for the place known by the name of Temescal.

In testimony whereof I hereunto set my hand and affix my private seal, (not having a seal of office,) at San Francisco, California, this thirtieth day of October, A. D. 1854, and of the independence of the United States of America the seventy-ninth.

[SEAL.]

GEO. FISHER, *Sec'y.*

Filed November 8th, 1854.

C. E. CARR, *Clerk.*

Notice of appeal.

47 United States district court for the southern district of California.

Manuel Auguisola, appellant,
vs.
The United States, appellee.
} Notice of intention to prosecute the appeal from the decision of the board of land commissioners.

Manuel Auguisola, claimant of the land known as the rancho of Temescal, situate in the county of Santa Barbara, and the southern district of California, hereby gives notice of his intention to prosecute his appeal from the decision of the board of land commissioners rendered in his claim for the said land, which was presented before the said board of commissioners and by them rejected; this claim being that which is numbered No. 520, the transcript whereof is filed in this office.

N. HUBERT,
Attorney for petitioners.

Filed Feb'y 5th, 1855.

C. E. CARR, *Clerk.*

48 *Petition for review.*

United States district court for the southern district of California.

Manuel Auguisola, appellant,
vs.
The United States, appellee.
} Petition of the appellant praying the court to review the decision of the United States land commission.

Your petitioner, Manuel Auguisola, respectfully show that on or about the 17th day of March, 1843, on the petition of Francisco Lopez and José Arrellanes, to the proper authorities, Governor Micheltorena granted to them a certain tract of land, or rancho, in the county of Santa Barbara, of three square leagues, called Temascal, which they conveyed unto you petitioner on the 27th day of September, 1847, and judicial possession was given thereof to your petitioner; that the said land was occupied, improved, cultivated, and stocked with cattle, according to law; that the said land, or rancho, is situated in the southern district of California.

Your petitioner further show, that on the 19th day of January, A. D. 1853, he presented his claim for the aforesaid three leagues of land before the United States land commissioner, appointed under the act of Congress passed on the third of March, 1851, entitled an act to ascertain and settle the private land claims in the State of California, when sitting as a board, and prayed the said board to confirm his title; that on the 4th day of April, 1854, the said board of commissioners decided upon the validity of your petitioner's claim, and rejected it.

Your petitioner pray, that a transcript of the record of the board of commissioners on the claim presented to them as aforesaid, and of the documentary evidence and testimony of the witnesses on which it was founded, which is filed with the clerk of this court as directed by the 12th section of the act of Congress, passed on the 31st of August, 1852, entitled an act making appropriations for the civil and diplomatic expenses of the government, ending on the 30th day of June, 1853, and for other purposes, may be held and considered as part of this petition.

Wherefore your petitioner, appealing from the said decision of the board of commissioners, present this petition to the hon-
49 orable the district court in which the land is situated, and he prays this honorable court to review the said decision of the said board of commissioners, and to decide upon the validity of his claim.

N. HUBERT,
Attorney for petitioner.

Filed Feb'y 5, 1855.

C. E. CARR, *Cl'k.*

Summons.

UNITED STATES OF AMERICA,
Southern district of California, ss:

The President of the United States to Pacificus Ord, attorney of the United States for the southern district of California, greeting:

Take notice that a petition, a copy of which is herewith served upon you, has been filed against the United States, in the district court of the United States, in and for the southern district of California, on the fifth day of February, in the year of our Lord one thousand eight hundred and fifty-five, at the city and county of Los Angeles, in said district, by Manuel Auguisola, praying the said court to review, upon the grounds therein set forth, the decision of the U. S. land commissioners to ascertain and settle the private land claims in the State of California, of his claim for a tract of land called Temascal, in the county of Santa Barbara, California, containing three square leagues; which said claim was presented by said Manuel Auguisola to said commissioners, on the 19th day of January, A. D. 1853, and was by them rejected on the 4th day of April, A. D. 1854; and that you are required to appear at said court, in said city, within ten days after the service hereof, if served on you within the county of Los Angeles; and within twenty days, if served on you in the county of San Diego, or San Bernardino; and within forty days, if served on you in any other county of said State, exclusive of the day of service, and answer said petition, or that the plaintiff will
50 apply to the court for the relief therein demanded.

In witness whereof I have hereunto set my hand and affixed the seal of the said court, this twenty-third day of February, [SEAL.] in the year of our Lord one thousand eight hundred and fifty-five, at Los Angeles aforesaid.

C. E. CARR, *Cl'k.*

Received February 23d, 1855.

EDWARD HUNTER, *U. S. marshal.*

I served this summons, along with the proper copy of the petition, upon Pacificus Ord, attorney of the United States, by leaving with him a certified copy of the same, in the county of Los Angeles, at his office, in the southern district of California, on the twenty-fourth day of February, A. D. 1855.

EDWARD HUNTER, *U. S. marshal.*

Sworn to and subscribed before me, this 24th of February, A. D. 1855.

C. E. CARR, *Cl'k.*

Answer of U. S. attorney.

51 In the district court of the United States for the southern district of California, Los Angeles, Los Angeles county.

MANUEL AUGUISOLA, appellant, *vs.* THE UNITED STATES, appellee.	No. 521 of transcript. Answer to the petition of appellant for a review of the decision of the U. S. land com'rs.

The answer of Pacificus Ord, attorney of the United States for the southern district of California, in behalf of the United States, to the petition of Manuel Auguisola, (filed 5th of February, 1855,) alleging that on the 19th day of January, A. D. 1853, he presented his claim to the United States land commissioners, appointed under the act of Congress passed on the 3d of March, 1851, entitled "An act to ascertain and settle the private land claims in the State of California," to a certain tract of land or rancho in the county of Santa Barbara, of three square leagues, called Temascal, and prayed the said board to confirm it; and that on the 4th day of April, 1854, the said commissioners decided upon the validity of said claim, and rejected it; and praying this honorable court to review the said decision of the said board of commissioners, and to decide upon the validity of his claim.

And the said attorney, answering said petition in behalf of the United States, denies generally, all and singular, each and every allegation in the said petition contained, and denies specially "that on or about the 17th day of March, 1843, on the petition of Francisco Lopez and José Arrellanes to the proper authorities, Governor Micheltoreno granted to them a certain tract of land or rancho in the county of Santa Barbara, of three square leagues, called Temascal, which they conveyed unto your petitioner on the 27th day of September, 1847, and judicial possession was given thereof to your petitioner; that the said land was occupied, improved, cultivated, and stocked with cattle according to law," as alleged in said petition. And the said attorney of the United States, in pursuance of the provisions of the said act of Congress of the 3d of March, 1851, herein fully sets forth the grounds on which the said claim is invalid, to wit:

I. That the said alleged grant of Manuel Micheltoreno, dated
52 the 17th of March, 1843, was made in violation of the 4th article of the colonization law of Mexico of the 18th of August, A. D. 1824, in this: that the land granted, as alleged by claimant, was and is within ten leagues of the seacoast, and there is no evidence shown by said claimant that the supreme general executive power of Mexico, previously approved of the colonization of the public lands in Upper California lying within ten leagues of the seacoast; and it is denied that the previous consent of said supreme general executive power of Mexico in such case was ever had.

II. That at the date of the said alleged grant, the said land was occupied by, and in the possession of, the missions of the Territory of Upper California, and particularly by the mission of San Fernando, and could not therefore be colonized.

III. That the said alleged grant has not the conditions required by, and is not made in entire conformity with, the said law of Mexico of the 18th of August, A. D. 1824, and the regulations for the colonization of the territories of Mexico of the 21st of November, 1828.

IV. That the said alleged grant of Manuel Micheltoreno of said date contains no description of the locality, extent, and boundaries of the land pretended to have been granted, by which it can be identified and surveyed; and it is vague, indefinite, and void for uncertainty.

V. That the map shown by the said claimant does not aid the description of the land in the said alleged grant, and it is also vague, indefinite, and uncertain.

VI. That the said alleged grant is not executed upon the lawful stamped paper.

VII. That there is no evidence that the said alleged grant was ever approved by the departmental junta, or the assembly of California, or the supreme government of Mexico, and it is denied that it was even approved by the said departmental junta, or assembly, or supreme government.

VIII. That there is no evidence that the said alleged original grantees performed all the conditions or requirements of the
52 said alleged grant; and it is denied that they built a house upon the said tract of land within one year from the date of the said alleged grant, and that it was inhabited; and that they cultivated the said land; and that they solicited the respective judge for the judicial possession of the land, and that they received judicial possession of the same, in virtue of the said alleged grant, within one year from the date of the said alleged grant, or at any time thereafter.

IX. That the alleged transfer or act of sale of Francisco Lopez and José Arrellanes, the alleged original grantees, to Manuel Auguisola, the claimant, dated the 27th of September, 1847, conveyed no right, title, or interest in said land to the said claimant, for the reasons, that the said alleged grant not having been then approved by the departmental junta in California, or the supreme government of Mexico, and the said alleged grantees not having the lawful possession of the said land, and not having performed the conditions of the said alleged grant, and the requirements of the law, they had not then the perfect ownership of the said tract of land and the title in fee had not passed to said alleged original grantees.

X. That there is no evidence that the said Francisco Lopez, one of the said alleged original grantees, joined in the said alleged transfer or act of sale of said land; and it is denied that the said Francisco Lopez, who pretended to convey to said claimant the one undivided half of said tract of land, had any lawful authority so to do; and it is denied that the said claimant acquired, by said alleged act of sale, any right, title, or interest of the said Francisco Lopez, the alleged original grantee, in and to said tract of land.

XI. That the alleged judicial possession of the said land by Pablo de la Guerra to the said Manuel Auguisola, claimant, dated the 10th and 20th of November, 1847, is illegal and void; for the reasons, that the said Auguisola had no lawful right or title to said land at that time; that the said Pablo de la Guerra had no lawful authority to survey and give the juridical possession of said land to said Auguisola; that the said alleged act is not made according to the said
alleged grant and the map referred to therein, nor according to
54 the ordinance or law; that it is vague and indefinite, and that
the said alleged act is not upon stamped paper.

XII. That there is no evidence that the said Pablo de la Guerra was at the time of said alleged juridical act of possession first alcalde of the Partedo of Santa Barbara, and that he then had lawful authority, as such, to survey and give the juridical possession of the said tract of land to said claimant, and his authority to perform said alleged juridical act or acts is denied.

XIII. That the said claimant shows no definitively valid grant or title to the said tract of land claimed by him as aforesaid; and it is denied that he has, or ever had, any definitively valid grant or title to the said tract of land claimed as aforesaid.

Wherefore, the premises considered, the said attorney, respondent in behalf of the United States, prays that the said claimant may be served with a copy of this answer, and that, after due proceedings, this honorable court will decide the said claim of said petitioner for said tract of land to be invalid, and to decree costs against him, and general relief.

P. ORD.

Of Monterey co., attorney of the U. S. for the so. dis. of Cal.

Filed Feb'y 28, 1855. C. E. CARR, *Clk.*

Notice of hearing.

55 In the district court of the United States for the southern district of California.

M. AUGUISOLA *vs.* THE UNITED STATES. } No. 153. Transcript No. 521.

To Manuel Auguisola or his attorneys:

Take notice, that the above entitled cause will be brought to a hearing by the United States on Friday, the 19th day of October, A. D. 1855, or as soon thereafter as the same can be heard by the court.

P. ORD,
U. S. dist. att'y.

LOS ANGELES, *October* 11*th*, 1855.

Filed Octo. 11th, 1855. C. E. CARR, *Clk.*

Whereupon the following proceedings were had in open court, to wit:

Cause set for trial.

In the U. S. dist. court, southern dist. Cal'a.—December term, A. D. 1855.

LOS ANGELES, *Dec.* 24, 1855.

MANUEL AUGUISOLA, appl., *vs.* THE UNITED STATES, app'ee. } No. 153.

This cause, by consent of parties, was set for hearing on the 1st Monday in February next.

Opinion of U. S. dist. court.

56 In U. S. district court, south'n district of California.—December term, A. D. 1855.

LOS ANGELES, *Feb'y* 19, 1856.

MANUEL AUGUISOLA, applt., *vs.* THE UNITED STATES, app'ee. }

This case was called, and after argument by U. S. att'y, (att'y for appellant not being present,) was, upon the transcript and papers on file in the case, (it appearing that the notice of appeal has been duly filed,) submitted to the court for final adjudication, whereupon the opinion of the court was delivered, rejecting the claim, and a decree in accordance therewith was ordered to be entered upon the records of the court.

Letter of counsel.

In the United States district court for the southern district of California.

Manuel Auguisola *vs.* The United States.

It being impossible for me to attend to the above case, upon the application of Messrs. Gonzales y Cuesta, representing themselves as the purchasers of the rancho of Temescal, in the county of Sa. Barbara, I hereby authorize them to take another attorney.

San Francisco, *Oct.* 30*th*, 1856.

N. HUBERT.

Filed Dec. 30th, 1856.

C. SIMS, *Clk.*

Affidavit of Cuesta.

57 U. S. district court, southern district of the State of California, Los Angeles county.

Manuel Auguisola, appellant, *vs.* The United States, appellee. } Temescal. Docket No. 153.

State of California,
County of San Francisco:

Roman de la Cuesta, being duly sworn, says that he claims a certain interest in the rancho of Temascal, as assignee of the nominal appellant Manuel Auguisola, and that he was such assignee before this cause was appealed to the district court. Deponent further says, that he employed Mr. Hubert, a lawyer residing in the city of San Francisco, to take an appeal in this cause from the decision of the board of land commissioners to the United States district court, and to prosecute said appeal in said court. Deponent further says, that he has been informed, and verily believes, that said Hubert did not appear to prosecute said appeal in said court, and that said appeal was finally decided without having been defended on the part of this deponent. Deponent further says, that he has been informed by counsel, and verily believes, that he, (the deponent,) as assignee of said Auguisola, has a good, valid claim in the said rancho of Temescal as against the United States. And deponent further says, that he verily believes that he can establish such claim before the said district court, in case there should be granted a rehearing of the said appeal. Deponent further says, that he verily believes that said appeal was lost in said district court solely in consequence of the absence of his said attorney, Hubert.

ROMAN DE LA CUESTA.

Subscribed and sworn to before me, this 30th day of July, A. D. 1856.

[SEAL.] F. J. THIBAULT,
Notary Public.

Filed Dec. 30th, 1856.

C. SIMS, *Clk.*

Motion to reinstate case.

58 In the district court of the United States for the southern district of California.—Dec. term, 1856.

Before hon. Isaac S. K. Ogier.

MANUEL AUGUISOLA alias RAMON DE LA CUESTA, and FRANCISCO GONZALES CAMINO, appellants, *vs.* THE UNITED STATES, appellee.	Rancho Temescal. Docket No. 153.

Now comes attorney of appellants in the above case, and moves this honorable court for an order vacating the order to enter a decree rejecting the claim of appellants heretofore made, to wit, on the 19th day of Feb'y, 1856, and for leave of this honorable court to take further evidence.

HENRY HANCOCK.

Filed Dec. 30th, 1856.

C. SIMS, *Cl'k.*

Order.—No. 153.

In the United States district court for the southern district of California.—December term, 1856.

Before hon. Isaac S. K. Ogier, judge.

RAMON DE LA CUESTA and FRANCISCO GONZALES CAMINO, appellants, *ads.* THE UNITED STATES, appellee.	Rancho Temescal.

Upon motion by attorney of claimant in the above entitled cause, moving for an order to vacate the order to enter a decree rejecting the claim of appellant heretofore made, to wit, on the 19th of Feb'y, 1856, and for leave to take further evidence, the affidavit of Don Ramon de la Cuesta being read, and the respective counsel having been heard, it is ordered, adjudged, and decreed that the said order of dismissal be vacated, and that the cause be restored to the docket of this court; and it is further ordered and decreed, that the order

59 to enter a decree rejecting, heretofore rendered in this cause, be, and the same is hereby annulled, and leave given the respective parties to take further evidence.

Filed Dec. 30th, 1856.

C. SIMS, *Cl'k.*

Motion for reinstatement.

Whereupon the following proceeding were had, to wit, in open court:

December term, 1856.

LOS ANGELES, *December* 30, 1856.

In U. S. dist. court, south. dist. Cala.

MANUEL AUGUISOLA, appellant,
vs.
THE UNITED STATES, appellee.
No. 153.—Temescal.

Now on this day this cause coming on to be heard, the parties appearing by their respective attorneys, the appellee, by P. Ord, esq., U. S. atty., and the appellant, by his atty., Henry Hancock, esq., whereupon the attorney for appellee files his motion, and the affidavit of De la Cuesta, and the letter of N. Hubert, former attorney of said appellee, in support of said motion to vacate the order to enter a decree heretofore made in this cause, and for leave to take further testimony in said cause, whereupon it is ordered by the court that the hearing of said motion be continued.

60 MANUEL AUGUISOLA, appellant,
vs.
THE UNITED STATES, appellee.
No. 153.—Temescal.

1856.—December term of U. S. dist. court for the southern dist. of Cala.

Before hon. Isaac S. K. Ogier, judge.

Beli. *Synopsis of transcript.*

Page 3. Petition of claimant to commission, of date Jan'y 19, 1853, asking confirmation of 3 leagues.

4 & 5. Deposition of Don José Maria Covarrubias in proof of signatures, building a house, occupation and cultivation; taken Jan'y 29, 1853.

Deseño No. 1.

6 & 7. Expediente of Francisco Lopez and José Arrellanes, of date Jan'y 12, 1842, and marginal order of prefect, Jan'y 17, 1842.
7 & 8. Alcalde report, 27 Feb'y, 1843, and order of Gov. Micheltorena, March 17, 1843, that the administrator of San Fernando inform.

Deseño No. 2.

8 & 9. Report of administrator, and order of Gov. that title be issued, 17 March, '43.
9 & 10. Certificate of U. S. surv. gen'l.
11. Title page of translation of espediente.
12, 13 & 14. Translations of expediente and decree.
15. Translation of grant.
16 & 17. Original grant.
61 18, 19, 20, 21, 22 & 23. Copy of expediente and grant made and certified by Francisco Arce, the secretary and first officer of the departmental assembly, of date March 17, 1843.
24 to 28. Judicial possession in 1847.
29 to 33. Translation of same.
34 to 37. Document of sale from Lopez and Arrellanes to claimant.
38 to 39. Translation of same.
41 to 43. Opinion of land commission.
44. Decree.

Filed Dec. 30th, 1856.

C. SIMS, *Cl'k.*

62 *Deed—Auguisola to Cuesta et al.*

This indenture, made this sixth day of December, A. D. one thousand eight hundred and fifty-four, between Manuel Auguisola and Concepcion Lorenzana, his wife, parties of the first part, and Ramon de la Cuesta and Francisco Gonzales Camino, of the second part, all of the county of Santa Barbara, and State of California, witnesseth: That the said parties of the first part, for and in consideration of the sum of one dollar, lawful money of the United States of America, to them in hand paid by the said parties of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have remised, released, and quit-claimed, and by these presents do remise, release, and quit-claim unto the said parties of the second part, and to their heirs and assigns forever, all their right, title, and interest in and to a certain rancho lying and situate in the county of Santa Barbara, and known as rancho "Piro," said rancho containing three square leagues, or "sitios de ganado mayor," more or less; together with all and singular the tenements, hereditaments, and appurtenances, including the iron and mark thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, personal property, possession, claim and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in, or to the above described premises, and every part and parcel thereof, with the appurtenances; to have and to hold all and singular the above mentioned and described premises, together with the appurtenances unto the said parties of the second part, their heirs and assigns forever.

In witness whereof the said parties of the first part have hereunto set their hands and seal, the day and year first above written.

CONCEPCION LORENZANA $\underset{\text{mark.}}{\overset{\text{her}}{\times}}$ DE AUGUISOLA, [SEAL.]

MANUEL $\underset{\text{mark.}}{\overset{\text{his}}{\times}}$ AUGUISOLA, [SEAL.]

Testigo : FRANCO. RUAZ,
JOS. A. HINCHMAN.

63 STATE OF CALIFORNIA,
County of Santa Barbara, ss:

On this sixth day of December, A. D. one thousand eight hundred and fifty-four, personally appeared before me, George D. Fisher, county clerk in and for the said county, Manuel Auguisola, and Concepcion Lorenzana, his wife, known to me to be the persons described in, and who executed the foregoing conveyance, who acknowledged to me that they had executed the same freely and voluntarily, and for the uses and purposes therein mentioned; and the said Concepcions Lorenzana, having been by me first made acquainted with the contents of such conveyance, acknowledged, on an examination by me had apart from, and without the hearing of her husband, that she executed the same freely and voluntarily, without fear or compulsion, or undue influence of her husband; and that she does not wish to retract the execution of the same.

In testimony whereof I have hereunto set my hand and the seal of the county court, on the day and year last above written.

[SEAL.]

GEORGE D. FISHER,
County clerk.

STATE OF CALIFORNIA,
County of Santa Barbara.

I do hereby certify that the foregoing instrument is recorded in liber B of deed, page 118. of the records of the recorder's office in and for the county aforesaid.

GEORGE D. FISHER, *Recorder.*
By JOS. A. HINCHMAN, *Dep'y.*

Filed Jan'y 13th, 1857.

C. SIMS, *Cl'k.*

Affidavit of Camino.

64 **Manuel Auguisola**, appellant, *ads.* **The United States**, appellee. } Rancho Temescal. No. 153.

Before the United States dist. court for the southern district of California.—December term, 1856.

Francis Gonzales Camino, resident of Santa Barbara county, State of California, makes oath, that he is the same Francisco Gonzales Camino who is mentioned in the deed of conveyance from the appellant to himself, and Don Ramon de la Cuesta, on the 6th day of December, 1854, and herewith filed in this honorable court, and that the tract of land thus conveyed and therein called "Piro," is the identical tract which is claimed as the Rancho Temascal; that the said rancho is well known by the name of Piro as well as Temescal, hence the misnomer in the said deed of Piro in lieu of Temascal.

FRANCA. GONZALES CAMINO.

Sworn and subscribed to before me this 13th day of January, 1857.

C. SIMS, *U. S. Commissioner*.

Filed Jan'y 13th, 1857.

C. SIMS, *Clerk*.

Depo. of Pedro Lopez.

65 Deposition of Pedro Lopez, taken before C. Sims, United States commissioner for the district of California, at the United States court-house, in the city of Los Angeles, on Monday, the 12th day of January, A. D. 1857, at 3 o'clock p. m., on behalf of the appellants, by consent and agreement of parties to be used in testimony in a certain cause now pending in the United States district court for the southern district of California, being case No. 153 on docket of said court, wherein the United States are appellee and Manuel Auguisola appellant.

Present: P. Ord, U. S. attorney, on behalf of appellees, and Henry Hancock, esqr., on behalf of appellants.

Manuel Auguisola, applts., *ads.* **The United States**, app'lees. } No. 153.

Pedro Lopez, being duly sworn on the part of appellant, deposes and says as follows:

Quest. What is your name, age, and place of residence?
Answer. My age is 51 years; I reside in San Fernando, in this county.

Quest. Do you know the rancho called Temescal, in the county of Santa Barbara.

Answer. Yes, I do.

Quest. Please state how long you have known it, and whether you have any interest in it or not.

Answer. I have known it ever since the year it was granted to my brother, Francisco Lopez, and Jose Arrellanes, and I have no interest whatever in the said tract of land.

Quest. Please state what you know of its location and boundaries.

(Question objected to by U. S. att'y.)

66 Answer. It is situated in the mountains, and adjoining the Rancho of San Francisco, and also the ranch of Carlos Antonio Carrillo, deceased, and upon the side where it adjoins the Rancho of San Francisco a ridge ("cuchillo") of hills was the recognised boundaries. Upon another side the boundary line of the aforesaid Carrillo was known as the boundary; on the north I was not aware of the boundary line, it being a mountainous country; an arroyo runs through the central part of said rancho, which arroyo is called "Pyro," by which name it was known until the tract was applied for, when it was given the name of "Temascal," in consequence, I believe, of a temascal having been made there by the Indians to enjoy the "hot air bath."

Quest. State in what manner the land is situated on the arroyo in respect to where it commences and ends on the same.

(Objected to by U. S. att'y.)

Answer. I think it may be a league and a half in extent along the arroyo, from the placeñto to the opposite line, near the mouth of the Cañada.

Quest. Does this ranch lie principally in a cañada?

(Objected to by U. S. att'y.)

Answer. This land is in the cañada, within the mountains.

Quest. How much land do you think there is in the ranch you have known as Temescal?

(Objected to by U. S. att'y.)

Answer. I do not know how much land there may be in the tract, the cañada being narrow, bordered by high hills and mountains.

Quest. You are here shown the map of the transcript in this case, No. 1, marked sketch "G," case No. 521, and requested to state whether by it you recognise the land called "Temescal."

(Objected to by U. S. att'y.)

67 Answer. I do recognise the land called "Temescal" by it. On the left hand side of the map is the entrance of the cañada, and upon the banks of the arroyo, near the centre of the map, is the location of the Temescal; I mean by that the "Indian sweat houses."

Question. Please state whether you know the places shown on the map as "Llano Grande" and "Mesa Grande."

(Objected to by U. S. attorney.)

Ans. I do.

Quest. Do they, together with the different Cañadas shown on the map, as also the arroyo, and different "Lomas," constitute a part of the tract of land which you have known as the rancho "Temescal?"

(Objected to by U. S. attorney.)

Ans. Yes, they do.

Quest. Please show on the map the locality of the "Placeñto" heretofore named by you in this deposition.

(Objected to by U. S. attorney.)

Ans. The "placeñto" is on the right hand border of that portion of this map representing lands in the immediate vicinity of the "Arroyo."

(Objected to by U. S. attorney.)

Quest. Please state into what that arroyo discharges itself.

(Objected to by U. S. attorney.)

Ans. It empties into the arroyo, which runs from San Francisco to Santa Clara.

Quest. At about what distance from the mouth of the Cañada, heretofore referred to, does it empty in the arroyo that runs from San Francisco to Santa Clara?

(Objected to by U. S. attorney.)

Ans. About a league, more or less.

Quest. What is the character of the country opposite to the mouth of the Cañada, and in the direction of the point where the arroyo discharges itself into the arroyo that runs from San Francisco to Santa Cruz?

(Objected to by U. S. attorney.)

68 Ans. It is of a rocky and sandy character.

Quest. Are there any high hills in that direction?

(Objected to by U. S. attorney.)

Ans. There are.

Quest. How far distant are they from the mouth of the Cañada?

(Objected to by U. S. attorney.)

Ans. I cannot say. From the mouth of the Cañada in the direction of the hills the country is broad. I can't calculate the distance.

Quest. State by whom the land is owned between the mouth of the Cañada, heretofore referred to by you as being on one side of the rancho Temescal, and the place where the arroyo of that same Cañada discharges itself into the arroyo, heretofore named by you as running from San Francisco to Santa Clara.

(Objected to by U. S. attorney.)

Ans. The arroyo, from where it comes out of the mountains at the mouth of the Cañada until it joins the other mentioned arroyo, is the boundary line of the lands of Don Ygnacio del Valle, called "Camulas," and the lands on the other side of this arroyo belong to the ranch of Don Carlos Carrillo.

Quest. Do you know the tract of land called "San Francisco?" if so, state where it is situated in regard to the tract of land called Temascal claimed in this case.

(Objected to by U. S. attorney.)

Ans. I do. It is separated from the lands of "Temescal" by a ridge of hills.

Quest. Is the rancho "Camulo" a part of the tract of lands claimed by Don Ygnacio del Valle called San Francisco?

(Objected to by U. S. attorney.)

Ans. It is the same tract as the tract called San Francisco.

Quest. You are here shown the map No. 2 accompanying
69 this transcript. State if you recognise the land shown by it.

Ans. I do not understand this map.

Cross-examination by U. S. att'y.

Quest. Do you know how to read?

Ans. I do not.

Quest. Do you know how to write?

Ans. I do not.

Quest. When were you first on the rancho of Temescal.

Ans. At the time that Don Antonio del Valle was administrator of the mission of San Fernando; I think it was in the year 1835; and the last time I was on the rancho I do not recollect what year it was; it was when I went there to take a lot of cattle belonging to Ma. Gonzales.

Quest. Who lived on the rancho when you were on it the last time?

Ans. There was some natives of Lower California living there, one by the name of Francisco Castello; I do not remember the names of the others; there were also some Indians living there.

Quest. Who owned the ranch at that time?

Ans. Francisco Gonzales Camino and Roman de Cuesta.

Quest. Did you ever see the said map No. 1; when did you first see the map No. 1, if ever, before it was shown you on this examination; if yea, where was it shown you; by whom, and who was present?

Ans. Yes, I have before seen it; this morning was the first time that I ever saw it; no one showed it to me this morning; I saw it laying on the table while they were taking my deposition this morning, and it was now shown to me at this examination.

Quest. Look at the said map No. 1, and point out, if you can, the location of the "Mesa Grande."

70 Ans. The witness points to a place on the map now marked letter "A," in pencil, at the place designated as the "Mesa Grande," saying at the time, that the map is badly made.

his
PEDRO + LOPEZ.
mark.

Sworn and subscribed to before me this 12th day of January, A. D. 1857.

C. SIMS, *U. S. com'r.*

UNITED STATES OF AMERICA,
State of California, county of Los Angeles, ss:

I, C. Sims, United States commissioner for the district of California, do hereby certify that the foregoing deposition of Pedro Lopez, was taken before me, in accordance with the request and agreement of the said attorneys, at the United States court house, in the city of Los Angeles, State of California, on behalf of the appellants; that the said Pedro Lopez was by me duly sworn according to law, as a witness in said cause, in the caption of this deposition mentioned, and after being so sworn, his testimony was by me reduced to writing in his presence and that of the said attorneys, and after having been by me carefully read to him, and by him corrected as he desired, was by him signed in my presence.

In witness whereof I hereunto set my hand and affixed my private seal (having no seal of the office) this 13th day of January, 1857.

C. SIMS, *U. S. com'r.*

Filed this 13th January, A. D. 1857.

C. SIMS, *Cl'k.*
Pr. J. H. COLEMAN, *Dep'ty.*

71 *Deposition of Yg. del Valle.*

MANUEL AUGUISOLA, appellant,
vs.
THE UNITED STATES, appellee.
Case No. 153.

The deposition of Ygnacio del Valle, taken before C. Sims, United States commissioner for the district of California, at the United States court-house, in the city of Los Angeles, on Monday, the 19th day of January, A. D. 1857, at 3 o'clock p. m. on said day, on behalf of the appellant, by the consent and agreement of the attorneys of the parties, to be used as testimony in a certain cause now pending in the United States district court for the southern district of California, being case No. 153 on the docket of said court, wherein Manuel Auguisola is appellant and the United States are appellees.

Present: Henry Hancock, esq., attorney on behalf of the appellants, and P. Ord, attorney on behalf of appellees.

Quest. What is your name, age, and place of residence?

Ans. My name is Ygnacio del Valle, I am 48 years of age, and reside in Los Angeles county, State of California.

Quest. Do you know the rancho of "Temascal," in the county of Santa Barbara, and, if so, how long have you known it?

Ans. I do, and have known it about 15 years.

Quest. Have you any interest in the rancho?

Ans. I have none.

Quest. Is this rancho ever called by any other name than that of "Temascal?" if so, by which?

Ans. Yes, it is called "Peru."

Quest. By which name is it best known, by "Peru" or "Temascal?"

Ans. It is more generally called "Peru" than "Temascal."

Quest. Please state what you know of the extent and boundary of this rancho.

72 (Objected to by U. S. attorney.)

Ans. I have not been able to ride over it. I can only go in the Cañada, in the centre of which is an "arroyo" called "Peru." The Cañada is very narrow, and the balance of the rancho is generally too rough to be travelled over, consisting of high hills. I believe the claimant asked for four leagues. It is bounded on one side—the southwest—by the rancho of San Cayetano, now owned by Moore; and on the southeast by the rancho called San Francisco, which rancho I have known since 1839; it having been the property of my father, and is the property of myself and others, and has been since the decease of my father.

(Objected to by U S. attorney.)

YGNACIO DEL VALLE.

Sworn to and subscribed before me this 19th day of January, 1857.

C. SIMS, *U. S. Comn'r.*

I, C. Sims, of the city and county of Los Angeles, and State of California, commissioner to take affidavits and bail in civil cases pending in the courts of the United States, and depositions under the acts of Congress approved September 24th, A. D. 1789, February 20th, A. D. 1812, and March 1st, A. D. 1812, by virtue of my office of clerk of the United States court of the southern district of California, and by special appointment by the United States circuit court for the State and circuit of California, do hereby certify that the foregoing deposition of Ygnacio del Valle was taken before me on the 19th day of January, A. D. 1857, according to the agreement and request of the said attorneys of the parties at the United States district court-house, in the city of Los Angeles, and State of California, in behaf of the

73 That the said Ygnacio del Valle was by me duly sworn according to law as a witness in said cause in the caption of this deposition mentioned, and, after being so sworn, his testimony was by me reduced to writing in his presence; and after having been by me carefully read to him, and by him corrected in every particular as he desired, was by him signed in my presence.

In witness whereof I hereunto set my hand and private seal, (having no seal of office,) this 19th day of January, A. D. 1857.

C. SIMS,
United States commissioner.

Filed this 19th January, 1857.
C. SIMS, *Clk.*
Pr. J. H. COLEMAN, *Deputy.*

Motion to substitute parties.

In the district court of the United States for the southern district of California.—December term, 1856.

Before Hon. Isaac S. K. Ogier, U. S. dist. judge.

MANUEL AUGUISOLA, appellant,
ads.
UNITED STATES, appellee.
No. 153.

Now comes Ramon de la Cuesta and Francisco Gonzales Camino and moves that upon the showing heretofore made in this cause by them, that they be substituted as parties in lieu of their assignor, the appellant in this cause.

HENRY HANCOCK,
Att'y of appellant.

Filed this 20th February, 1857.

C. SIMS, *Clk.*
Pr. J. H. COLEMAN, *Deputy.*

Order of substitution.

74 In the United States district court for the southern district of Cal'a.—December term, 1856.

MANUEL AUGUISOLA, appellant, *ads.* THE UNITED STATES, appellee. } No. 153.

Upon hearing of this cause this day it is hereby ordered, adjudged, and decreed that Ramon de la Cuesta and Francisco Gonzales Camino be substituted as parties in the above entitled cause in lieu of their assignor, (immediate,) the appellant, Manuel Auguisola.

Filed this 20th February, 1857.

C. SIMS, *Clk.*
Pr. J. H. COLEMAN, *Deputy.*

Whereupon the following proceedings were had in open court, to wit:

Decision.

In United States district court, southern district of Califor'a.—Regular December term, 1856.

LOS ANGELES, *February 20th*, 1857.

MANUEL AUGUISOLA, appellant, *ads.* THE UNITED STATES, appellee. } No. 153. Temascal.

Now, on this day, come the parties aforesaid by their attorneys aforesaid.

Whereupon, on motion heretofore filed in this cause is taken up and argued and granted by the court.

Whereupon, it is ordered that Ramon de la Cuesta and F. G. Camino be substituted in the place of Manuel Auguisola, and that the cause be continued in the name of de la Cuesta, and that
75 the order heretofore made to enter a decree in this cause be and the same is hereby vacated, and that the appellant have a rehearing of this cause on condition of payment of costs, and that he have leave to take further testimony in this cause.

Whereupon this cause being called for trial, and after argument of counsel aforesaid, is submitted to and confirmed by the court, and a decree was ordered to be entered up in conformity to said opinion, which is accordingly done.

Decree.

76 In the United States district court for the southern district of California.—December term, 1856.

Hon. Isaac S. K. Ogier, judge.

Ramon de la Cuesta and
Francisco Gonzales Camino, appellants,
ads.
The United States, appellees.
Docket No. 153.

This cause coming on to be heard at a regular term of this honorble court, on appeal from the decision of the United States land commissioners, for ascertaining and settling private land claims in the State of California, appointed under an act of Congress, approved on the 3d day of March, 1851, upon a transcript of the proceedings, decision, papers, and evidence upon which such decision was founded, and it appearing that said transcript was duly filed according to law, and the counsel for the respective parties having been heard, it is ordered, adjudged, and decreed that the said decision of the said land commissioners be reversed, and the same is hereby reversed; and that the claim of the said appellants, Ramon de la Cuesta and Francisco Gonzales Camino, to the rancho "Temascal," situated in the county of Santa Barbara, California, is a good and valid claim, and their title thereto is hereby confirmed to the extent of three square leagues of land, and no more, to be located agreeably to the calls of the original grant.

ISAAC S. K. OGIER, *U. S. dist. judge.*

Filed July 21st, 1857.

C. SIMS, *Cl'k.*

Motion for leave to appeal.

77 Whereupon the following proceedings were had in open court, to wit:

United States court, southern district California.—December term, 1857.

March 15, 1858.

R. de la Cuesta et al.
vs.
The United States.
No. 153.

On motion of E. J. C. Kewen, acting U. S. district attorney, for leave to appeal in this cause, the same is taken under advisement.

Order vacating motion for appeal.

United States court, southern district of California.—December term, A. D. 1858.

DECEMBER 7th, 1858.

R. DE LA CUESTA et al.
vs. } No. 153.
THE UNITED STATES.

Now on this day comes J. R. Getchell, U. S. dist. att'y, and moves the court to withdraw the motion heretofore filed to appeal this case: which motion, being heard by the court, is granted, and the said motion heretofore filed is and the same is hereby withdrawn.

Order for appeal.

78 United States district court, southern district of California.—December term, A. D. 1861.

DECEMBER 9th, A. D. 1861.

MANUEL AUGUISOLA, app'lee. No. 153, D. C.
vs. No. 521, L. C.
THE UNITED STATES, app'lt. "Temescal."

And now comes J. R. Getchell, esq., appointed at the request of the court to act in behalf of the U. S., (there being no U. S. district attorney present,) and moves the court that an appeal be allowed the U. S. in this case to the Supreme Court of the U. S. from the order and decree of this court heretofore rendered; which motion being heard, and by the court understood, is granted.

United States district court, southern district of California.

CLERK'S OFFICE, *Los Angeles.*

I, John O. Wheeler, clerk of the district court of the United States for the southern district of California, do hereby certify the foregoing seventy-eight pages, numbered from 1 to 78, both inclusive, to contain a full, true, and correct transcript of the record of the proceedings and of the decision of said court, and the papers and evidence on which said decision was founded, on file in my office, in case No. 153, on the docket of said court, wherein Ramon de la Cuesta et al. are the claimants, against the United States, for the place called Temascal.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at the city of Los Angeles, this 30th day of December, A. D. 1861.

[SEAL.]

JOHN O. WHEELER, *Clerk.*

SUPREME COURT OF UNITED STATES.

No. 183.—December Term, 1862.

THE UNITED STATES, APPELLANT,

vs.

MANUEL AUGUISOLA, APPELLEE.

BRIEF FOR THE UNITED STATES.

483

SUPREME COURT OF UNITED STATES.

No. 183.—December Term, 1862.

THE UNITED STATES, APPELLANT,

vs.

MANUEL AUGUISOLA, APPELLEE.

BRIEF FOR THE UNITED STATES.

IN SUPREME COURT OF UNITED STATES.

No. 183.—DECEMBER TERM, 1862.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

United States, appellant,
vs.
Manuel Auguisola, appellee.

BRIEF FOR THE UNITED STATES.

STATEMENT OF FACTS.

This case is an appeal by the United States from the judgment of the District Court for the southern district of California. The judgment of that court, confirmed to the claimant, as the assignee of Francisco Lopez and José Arelanes, (the original grantees,) the rancho named "Temescal," to the extent of *three square leagues* of land, situated in Santa Barbara county.

This claim is founded on a pretended colonization grant under the Mexican laws, dated March 17, 1843, purporting to have been made by Micheltorena to the assignors of the claimant, and on an assignment of their interest by them to him by deed dated September 27, 1847.

In support of this claim the following *documentary evidence* was offered: 1st. *From the private possession of the claimant*, a grant for the land claimed as above described, with the usual conditions of such grants.—(*Printed Record, p.* 8–9.)

2d. Two original maps and expedientes, with their accompanying translations. The first expediente and map, *from the private possession of the claimant*, certified by Francisco Arce, as first officer and secretary pro. tem. of the departmental assembly, dated March 17, 1843, and filed in the cause July 19, 1853.—(*Printed Record, p.* 13.) The second, *from the archives of the surveyor general's office* in California, certified by Jno. C. Hays, and filed in the cause February 13, 1854.—(*Ib., p.* 6–8.)

3d. A record of the proceedings had in relation to obtaining judicial measurement and possession of the land, dated *November* 20, 1847; also from the *private possession of the claimant.*—(*Ib., p.* 17–20.)

The only *oral evidence* in the case which it will be necessary to notice, is that of *José M. Covarrubias* to the signatures of the various parties named in the documentary evidence, and also to the facts that a house was built on the land by the grantees, immediately after the making of the grant, and that it has been inhabited ever since; that Lopez lived in the house with his family until the sale to the present claimant, who has occupied it ever since; and that the land has ever since its first occupation been cultivated and used for the keeping of cattle."—(*See Record, p.* 2–3.)

This claim was rejected by the land commission and by the *first* decision of the District court on account of the *vagueness* and *indefiniteness of the boundaries* of the grant and the *want of segregation* from the common mass of public lands.—(*Printed Record, p.* 25–32.)

On the *new trial* granted by the District court, the only additional evidence offered was the testimony of Pedro Lopez and Ygnacio del Valle, in regard to the locality and boundaries of the land granted. With this additional evidence the District court confirmed the claim. —(*Ib., p.* 45.) From that judgment the United States has appealed.—(*Ib.*, 46.)

ARGUMENT FOR UNITED STATES.

This claim, when tried by the rules established by this court for testing the *authenticity* and *validity* of California land grants, must be rejected.

It is admitted, that under the decisions of this court in the cases of Fremont, (17 *How. R.*, 542, *&c.*,) of Larkin, (18 *ib.*, 557, *&c.*,) of Southerland, (19 *ib.*, 363, *&c.*,) and other subsequent cases, the original ground on which this claim was rejected cannot now be maintained. If that were the *only* ground of objection disclosed by the record, this appeal ought to be dismissed. But under decisions of this court still later than those above referred to, radical objections are disclosed, which strike at the very foundation of the claim.

These objections may be generalized under two propositions:

I. The grant, if genuine, is *not legally proved.*

II. The grant is *fraudulent and void.*

I. *The grant*, if *genuine*, is *not legally proved.* 1st, because the evidence offered to authenticate it is *entirely secondary;* and, 2d, because no *legal basis* has been laid for its introduction. This is evident from an inspection of the record. Not a single one of the parties whose names appear in the documentary evidences of title, as grantor, actors, or witnesses, was called as a witness in support of this claim, nor is any legal ground laid to account for this very remarkable omission. The only evidence offered to *authenticate* the paper title is the testimony of José M. Covarrubias, who swears to the *genuineness of all the signatures to all the papers*, from the grant down to the record of judicial possession.—(*Printed Record, p.* 2 *and* 3.)

But this is not sufficient without calling the parties or accounting for their absence: 1st, because it is a departure from the established order of proof; and, 2d, because, under the system of fabricating land grants in California, the signatures may be *genuine*, and yet the papers be *forgeries*, because *antedated*.—(22 *Howard R.*, 404–405, 455–456; 23 *ib.*, 279–283, 350–353, 467, 516–517.)

The character of the witness, also, is well known by this court, (*Luco case*, 23 *Howard U. S. R.*, 524, 540.)

II. *The grant is fraudulent and void.*

This conclusion is fully established by the combined force of a number of separate facts, some of which, singly, and others when taken collectively, this court has decided to be tests of the authenticity or spuriousness of grants of this kind.

1. The first suspicious circumstance *against* this grant is the fact before referred to, viz: the failure to call or to account for the absence, as witnesses, of the original parties to the grant, and accompanying papers. If *fraudulent*, it is an ingenious device whereby *forgery* may be committed *without perjury*. In the absence of proof to the contrary, the legal presumption is, that all these parties were living and accessible.

The fact that the governor, secretary, and others are not called as witnesses in support of the authenticity and validity of grants, when accessible, is a circumstance *entitled to weight against a grant*.—(22 *Howard R.*, 457, 455, *&c.*; 23 *ib.*, 280, 282, 283, 342.)

2. The second fact against it is, that *this grant is not mentioned in Jimeno's Index*, *nor is it shown to be registered in any other contemporary record.* Registry is expressly required by the regulations of 1828. Evidence of the registration of a grant must be produced, or its absence accounted for.—(20 *Howard R.*, 63; 22 *ib.*, 392, 405; 23 *ib.*, 341.) Jimeno's Index embraces all grants made from and including the year 1830, to December 24, 1844.—(*See Index*, *p.* 3, 3*d.*) As the grant purports to have been made *March* 17, 1843, and to be "registered in the proper book," (*Printed Record*, *p.* 8–9,) if it had been made *at that date*, it *must* have appeared in that index, or in some other contemporary record, in common with all other genuine grants of that date. But no such record is produced. Its *absence*, therefore, from those records, furnishes *positive* evidence that the grant is a *forgery*.—(22 *Howard R.*, 405; 23 *ib.*, 79, 289, 349.)

3. This conclusion is not weakened by the facts that an expediente and map are produced from the archives of the land office, and the further fact, that the grant is registered as "No. 520" in Hartnell's Index. These two facts are really but one fact, as the index is merely a list of expedientes and papers "*found*" after the conquest of California. Hartnell's Index was not made by Mexican authority, but by American authority in the years 1847 and 1848. The registration of the grant in Hartnell's Index only proves that it was not fabricated *subsequently* to those years, but does not prove that it was not fabricated after the change of government.—(*See Shunk's Report to the Att'y Gen'l*, *p.* 4–5. *Knight's case*, 1 *Black's U. S. Reports*, 227, 248, 249.)

The two facts, that this grant is *not found* registered where *it ought* *to be*, viz: in the *contemporary* records, where, upon the face of the grant, it is certified that it is registered; and the fact that it is found registered where it *ought not* to be, viz: in a register made in the years 1847 and 1848, after the American conquest, rather *strengthen* than diminish the suspicions of its fraudulent character.

4. This case, unlike most cases, instead of *one diseño* and *expediente* has *two;* but, unfortunately, instead of being *copies* of each other, they *do not agree*, but differ from each other in a number of particulars, so as to cast suspicions on the genuineness of *both.*

1. The first expediente produced from the private possession of the claimant, filed January 19, 1853, and certified by Arce as a true copy of that under his charge as first officer of the departmental assembly, and which, therefore, ought to be the *most complete*, is deficient in two particulars contained in the second, filed February 13, 1854, and certified from the archives by John C. Hays, surveyor general, viz: 1st, the *concession* of the land by Micheltorena, and, 2d, his *reference* of the grant to the departmental assembly.—(*See Printed Record, p.* 13, 8.)

2. In the expediente first filed the administrator of San Fernando, who reports March 3, 1843, is named "José Villabrenicio."—(*See Printed Record, p.* 13.) In the second he is named "José Ma. Villarosa."

3. In the first expediente there is no caption stating the nature of the proceedings, no statement of the year of the grant, and no place for a seal.—(*See Printed Record, p.* 12.) Whereas, all these are found in the second.—(*Ib., p.* 3, 6.) From these *differences* it is apparent that the first expediente is written upon *un*official paper, whereas the second is written on *official* paper.

4. The *diseños or maps* are *not copies of each other*, but differ so widely that one of the witnesses of the claimant, Pedro Lopez, who recognized the land by the first map *did not know it by the second.*—(*Printed Record, p.* 41.)

The first map, also, has a *scale*, the second one has *none.* The first map has *no statement* as to *the extent of the land* asked for. The second one *has;* but it has subsequently been altered, so as to *enlarge* the quantity of the grant from 3 to 7½ square leagues. The distance from south to north, originally two (2) leagues, ("leguas,") has been altered to three, (3,) and from east to west, "one (1) league and a half" has been altered to two, (2,) but the *number* of the noun has been *overlooked*, and it remains, as at first, in the *singular* number, (legua.)

5. *Both expedientes and diseños, if genuine, ought to agree;* because Francisco Arce certifies that the *first* ("the present copy, together with the *design* (diseño,) is a *true copy of the expediente* in the office under my charge." This certificate purports to have been made at Los Angeles, March 17, 1840 (3?) Now, if the expediente certified by John C. Hays, from the archives, were genuine, it would agree with the first, but it does not. The inference, therefore, is, that one or other of them is a forgery; and in connexion with the antecedent facts they seem to destroy each other.

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6. Neither of the expedientes contains a copy of the grant, as is usual in genuine grants.

7. There is no direct allegation, nor is there any record evidence to show that the grant was ever confirmed by the departmental assembly, or even that it ever was presented to that body, except that arising from the certificate of Francisco Arce. On the contrary, from the silence of the journals on the subject, there is positive evidence that it never was before that body for consideration.

8. There is *no record evidence* of the *existence* and *delivery of the grant before July* 7, 1846.

9. There is no *reliable* evidence even of the *possession* of the land *prior to September* 27, 1847, the date of the alleged assignment by the original grantees to the present claimant. Covarrubias, the only witness to *this point*, is wholly unworthy of credit, having been convicted of *forgery* and *perjury* in the Luco case.—(23 *Howard R.*, 524, 540.)

10. The admitted fact that no steps were taken by the original grantees during the whole period of their alleged possession, from March 17, 1843, to September 27, 1847, in order to obtain judicial possession and measurement of the land, although expressly required as one of the conditions of the grant, is a strong circumstance in connexion with the foregoing against the genuineness of the grant.

11. The proceedings taken on the 20th of November, 1847, at the instance of the *present claimant* to obtain *judicial possession* of the land, add nothing to the strength of the claim, but are rather evidence, in this connexion, of a *consciousness* on his part of the *weakness* of the claim.

The proceedings in themselves are a *nullity*, because not held till sixteen months after the change of flags.—(22 *Howard R.*, 458; 19 *ib.*, 363-4; 10 *Peters R.*, 326.) Nothing could be done *after that date* to give *new force* or *validity* to the claim. If the claim was *good* at that date, the proceeding was unnecessary; if not, then it was too late to institute the proceeding after the conquest.

On the whole, inasmuch as the *burden of proof is upon the claimant*, (*Knight's case*, 1 *Black's U. S. R.*, 251,) and inasmuch as no such evidence of the genuineness of the claim has been presented as to exclude the *probability* that the grant has been *ante-dated*, the claim must be rejected.—(22 *Howard R.*, 406.) Indeed, what the court says in that case, is just as applicable to this case as it was to that. The grant in this case, as in that, purports to have been made by Micheltorena, and certified by Arce. It belongs to the same family, and must be disposed of in the same way.—(*See ib.*, *p.* 404-405.)

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